

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK PUBLIC ADVISORY COMMITTEE MEETING

Alexandria, Virginia

Friday, October 12, 2012

1 PARTICIPANTS:  
2 TPAC Members:  
3 MAURY M. TEPPER, III, CHAIR  
4 DEBORAH HAMPTON  
5 CHERYL BLACK  
6 DEE ANN WELDON-WILSON  
7 ANNE CHASSER  
8 SHARON MARSH  
9 KATHRYN BARRETT PARK  
10 LINDA McLEOD  
11 JODY DRAKE  
12 RAY THOMAS  
13 Union Members:  
14 HOWARD FRIEDMAN, NTEU 245  
15 HAROLD ROSS, NTEU 245  
16 RANDALL MYERS, POPA  
17 USPTO:  
18 DEBORAH COHN, Commissioner for Trademarks  
19 FRANK MURPHY, Deputy Chief Financial Officer  
20 DANA COLARULLI, Director, Office of Governmental  
21 Affairs  
22 SHIRA PERLMUTTER, Chief Policy Officer, Office of  
Policy and External Affairs

1 PARTICIPANTS (CONT'D):

2 SHARON MARSH, Deputy Commissioner for Trademark  
3 Examination

4 GERARD ROGERS, Chief Administrative Trademark  
5 Judge

6 JOHN OWENS, Chief Information Officer

7 RAJ DOLAS, Portfolio Manager for Trademark Next  
8 Generation

9 \* \* \* \* \*

10

11

12

13

14

15

16

17

18

19

20

21

22

## 1 P R O C E E D I N G S

2 CHAIRMAN TEPPER: Good morning,  
3 everyone, and welcome to this meeting of the  
4 Trademark Public Advisory Committee. I want to  
5 thank those of you who are viewing online for your  
6 interest and participation. I will remind you, if  
7 you have questions, we will from time to time  
8 throughout the day be taking questions here in the  
9 room. You are very welcome to email those into us  
10 and I will try to get to any observations or  
11 questions that you have.

12 We also have just a couple of updates  
13 for you. I would like to welcome two members to  
14 our Committee. One of them I will be welcoming  
15 back. But since our last meeting, I'm very  
16 pleased to let you know we have two new appointees  
17 who are joining the TPAC.

18 First is Dee Ann Weldon-Wilson. Dee Ann  
19 is very well known to many of you in the IP Bar.  
20 She is with Exxon Mobile. She has worked long in  
21 many associations. She's been very active in  
22 issues before the office and we're very glad to

1 have her. Looking forward to working with her.  
2 As well as Kathryn Barrett Park who we are  
3 welcoming back. Kathryn is with General Electric,  
4 a little company up in Connecticut somewhere that  
5 makes a few things you may use. She has  
6 graciously agreed to serve another term with our  
7 Committee, which I think shows that she has great  
8 generosity, if not, good judgment. But we're very  
9 grateful that she's here working with us.

10 Our other members of the TPAC, I will  
11 mention Linda McLeod is in Vancouver today and not  
12 able to be with us. Linda is with Finnegan  
13 Henderson. Anne Chasser is working with us from  
14 the University of Cincinnati. Cheryl Black from  
15 Goodman - I'm going to get it wrong, Cheryl.

16 MS. BLACK: Goodman, Allen and Filetti.

17 CHAIRMAN TEPPER: Thank you. In  
18 Richmond, Virginia. Deb Hampton, she's with  
19 Elizabeth Arden in New York. Jody Drake with  
20 Sughrue Mion here locally. As well as Ray Thomas  
21 from Law Offices of Ray Thomas right here locally,  
22 as well.

1           So we are close to on time. I will try  
2 my best to keep it that way. We're going to start  
3 off today with a budget update. We're very happy  
4 to have Frank Murphy, the Deputy CFO here, who's  
5 going to give us - well, we've got a few issues  
6 that are interesting and concerning, but I think  
7 you will see we have good people at the helm  
8 paying attention and we're doing our best in what  
9 is sometimes a difficult external climate to  
10 manage the finances of the offices. So, Frank,  
11 thank you, and I'll bring you - hopefully this  
12 will work from over there.

13           MR. MURPHY: Thank you. Good morning,  
14 everyone, and thank you for having us here. I'd  
15 like to take this opportunity to give you a brief  
16 overview of where we are with the performance  
17 results for fiscal year '12, talk a bit of the  
18 fiscal year '13 outlook, some of the key things  
19 that are happening government wide, and also touch  
20 on fiscal year '14 progress.

21           For fiscal year '12, you'll see the  
22 chart. Trademarks finished the year about \$242

1 million, which was very close to our working  
2 estimate, about 1.6 percent below that. And the  
3 spending finished at \$232 million, about 1 percent  
4 below our estimate.

5 So the preliminary operating reserve  
6 entering into fiscal year '13 is \$128 million.  
7 That final level we determine in the next few  
8 weeks as we finalize the cost from FY '12.

9 In FY '13, there certainly are a number  
10 of budget dynamics that are going on. The first  
11 that is widely known is that all federal agencies  
12 will be operating under a continuing resolution  
13 for six months. For PTO, that senior authority,  
14 that continuing resolution authority places us at  
15 the fiscal year '12 appropriation level which is  
16 about \$2.7 billion. We'll be monitoring our  
17 spending carefully. But this appropriation level  
18 should be adequate for us for a six month period.

19 We're not sure how that will play out  
20 for the full year, and therefore, we are being  
21 cautionary PTO-wide on our spending outlook.  
22 Given the health of what we just discussed as the

1 Trademark's operating reserve, however, we do not  
2 believe that there's going to be any significant  
3 impacts for the Trademark side of the operations.

4 One of the other uncertainties for  
5 fiscal year '13 is the sequestration. OMB has  
6 determined that the PTO will be subject to  
7 sequestration. Now, what that means for PTO is a  
8 reduction of about \$242 million. The potential  
9 impact of that, the specifics impact, we're  
10 continuing to work with OMB. They, on behalf of  
11 the administration, is working very closely with  
12 Congress. We expect that Congress will do the  
13 right thing.

14 However, personal opinion, I don't think  
15 that you're going to see that before the election.  
16 I do expect, though, that Congress will move  
17 forward and avoid the severe impacts of  
18 sequestration sometime in the November/December  
19 time period. For fiscal year '14, we have  
20 submitted an initial draft to OMB on September  
21 10th. There were no significant policy or program  
22 shifts in that budget. TPAC is reviewing that

1 draft as we speak and will also review the  
2 President's budget draft as our estimates are  
3 refined. We expect that we'll complete the budget  
4 by January with a release to Congress in February.

5 The other aspect, the community has a  
6 notice that PTO set out taking a look at  
7 potentially adjusting the Trademark fees. I  
8 believe the response period has been extended to  
9 October 22nd and looking to determine what that  
10 will do for any of the estimates going forward.

11 The budget that you're currently looking  
12 at does not reflect any changes to those fees.  
13 Obviously, we're just at this point assessing what  
14 inputs there may be. And, therefore, we really  
15 don't have a firm date on when the fees might be  
16 adjusted. It depends largely, in fact, entirely  
17 on the comments that we receive back to see  
18 whether that makes sense.

19 That is a snapshot of where we are for  
20 ending '12, what we're looking at in '13 going  
21 forward in '14. I do want to mention one other  
22 thing. I had a sidebar conversation with Maury.

1 We have a lot of things that go on behind the  
2 scenes, especially in allocating the cost for  
3 Trademark and Patents, and thought that this might  
4 be a forum the next time we meet to have a brief  
5 overview of that. We have a very robust  
6 activity-based costing system that we use at PTO.  
7 And if that's something that is agreeable to the  
8 Board, we would like to do that the next go around  
9 to, you know, we won't go into the weeds on that,  
10 but at least give everyone a good sense of the  
11 kinds of rigor that we put into the estimates and  
12 how we come up with that.

13 CHAIRMAN TEPPER: Thank you, Frank, very  
14 much. And he's being very gracious about the fact  
15 that I cornered Frank this morning and asked him  
16 if we might all be able to get a better  
17 understanding of the processes that our CFO office  
18 applies in in sort of allocating the budget and  
19 analyzing and understanding the numbers.

20 And so those of you who are fascinated  
21 by such topics, you really want to come to our  
22 next meeting in the spring. They have graciously

1       agreed that they'll provide us a little bit more  
2       of an in-depth briefing on that topic. So, you  
3       know, just like any good television series will  
4       leave you a teaser at the end of the season, I  
5       just want to dangle that one in front of you all  
6       for March. Does anyone have questions? I will,  
7       as usual, go back and underscore a couple points,  
8       but I'd first like to see if we have questions  
9       from the Committee? All right. Any questions  
10      from the public? Okay.

11                 Do remember, I think it's always useful  
12      to keep in mind at any point in time we're working  
13      on three different years of budgeting. That can  
14      be a little bit challenging to the mind. We're  
15      operating under our current projections. We're  
16      thinking about next year's budget. And we're  
17      working on the budget for the year out. So, you  
18      know, we do need to see it sort of track all three  
19      of those.

20                 Those of you who operate any type of  
21      business I think would shake your heads and marvel  
22      at the fact that you need to try to manage in that

1 way, as well as some of the additional vagaries  
2 that are introduced by being a part of the  
3 government, the continuing resolution.

4           You know, we are hopeful that that will  
5 resolve itself within six months. We do not know.  
6 So we'll, you know, obviously be watching that  
7 closely. We'll be interested in hearing an update  
8 in the spring about how things are progressing.  
9 But regardless of the income to the agency,  
10 regardless of filing levels, the ability to put  
11 that money to work or to spend that money does  
12 come from Congress and we can only do what  
13 Congress authorizes under the current statute and  
14 under our current regime. So the continuing  
15 resolution will, in effect, limit our ability to  
16 use and to spend any funds that may come into the  
17 office.

18           We're doing our best to plan for that,  
19 as you've heard, but we do want to keep an eye on  
20 that and certainly hope that we'll be able to  
21 resolve a budget bill. I think it's usually  
22 Commerce Justice State that will include PTO's

1 funding authorizations and budget.

2 So we have that looming, as well as, of  
3 course, the specter of sequestration. And any  
4 business that may have 10 percent lopped off on  
5 short notice, those will not be easy decisions to  
6 make. We'll hope for the best, but I understand  
7 that probably we are planning for other  
8 eventualities.

9 Okay. Thank you very much, Frank.  
10 We'll move ahead. And I like the fact that we're  
11 already slightly ahead of schedule. We'll  
12 identify this as a trend that we will hope will  
13 continue. Dana, we're glad to have you with us  
14 today. I know he was busy traveling at our last  
15 meeting. Dana Colarulli is going to provide us an  
16 update on developments on the Hill and legislative  
17 initiatives that may impact the office.

18 MR. COLARULLI: Thanks, Maury. Well,  
19 like any good TV series, you need promos. I'm  
20 going to give you a promo, as well, for the 113th  
21 Congress, the next Congress, because I think we're  
22 at the dwindling days here of Congress. The

1 election is causing not a lot of things to happen  
2 on Capitol Hill except one that I'll mention is  
3 going to happen this afternoon which is a  
4 wonderful event to also promo, the Trademark Expo  
5 next week.

6           And Commissioner Cohn and I will be  
7 joined. It's very exciting by five costume  
8 characters. I'm very excited to be next to the  
9 Geico gecko and the dangerously cheesy cheetah.  
10 So I'm going to be in good company this afternoon,  
11 hopefully with some congressional staff which we  
12 can then get to come out here next week for the  
13 actual event and, again, have a good, successful  
14 event.

15           So what I'm going to do today is just  
16 give you a sense of things that are active. Many  
17 of these things I'll call place holders for the  
18 next Congress. But we'll see some hearings  
19 certainly on some of these issues as the Congress  
20 dwindles after the election.

21           IP legislation that my office is  
22 following, substantive legislation, there's a few.

1 Certainly, the PLT and the Hague implementation  
2 treaties, these are bills that have now finally  
3 been introduced and passed out by the Senate.  
4 Hopefully they'll be picked up by the House, as I  
5 said, late November. The office has proposed  
6 implementing legislation for these two treaties  
7 twice, once in 2007, once in 2010.

8 This is the Patent Law Treaty and the  
9 Design Treaty. The Patent Operations will go  
10 through a similar exercise that the Trademark  
11 Operations did for Madrid in implementing those  
12 additional resources for U.S. Applicants, this  
13 case on the design side.

14 The saving high tech innovators from  
15 egregious legal disputes, it's a shield act. A  
16 lot of certainly visible press on software  
17 litigation, ways to address increasing costs in  
18 that area of technology. We're certainly watching  
19 that. It's interesting conversation in light of  
20 the new tools that the America Invents Act added,  
21 but, again, is something that we're watching.

22 There's a number of other bills that

1 address design issues, fashion design, auto parts.  
2 Not clear whether they will move forward this  
3 Congress. Again, my instinct would be no, but  
4 it's certainly furthering the discussion I think  
5 on the fashion design side, where Trademarks has  
6 played clearly a prominent role in protecting  
7 those companies. I think this is probably the  
8 furthest a bill has gotten, which is passed out of  
9 the Senate Judiciary Committee. Again, not clear  
10 whether the full body of the Senate will pass a  
11 bill there that will create essentially a new  
12 right, a more limited right for the fashion  
13 industry to protect their designs.

14 Similarly, a trade secret, legislation,  
15 I think we'll see more next Congress, an important  
16 issue for us to see what changes to the statute  
17 might be made. And we have some of our own ideas,  
18 as well. So, again, we're watching some of that  
19 activity.

20 Frank already addressed the CR and  
21 touched on sequestration. There's still a lot of  
22 unknowns I think, although we're managing our

1 budget as best we can. I think as I've said to  
2 this body before, I think we have some additional  
3 tools to do that. We're optimistic that we can be  
4 able to use the fees that we collect for  
5 operations.

6 I'll mention two. Last one, just a  
7 general interest on the AAA. After a major  
8 legislation, there's always discussion of  
9 technical corrections, and I think this agency  
10 will put some on the table. The IP Attaché' Act,  
11 the Intellectual Property Attaché' Act, Cheryl is  
12 going to talk a little bit more about the program.  
13 But again, legislation introduced that we have not  
14 taken a position on, but we think may benefit our  
15 efforts of building a consistent program and  
16 having resources abroad that can help U.S.  
17 businesses.

18 Just a quick snapshot at the times that  
19 we've been up on Capitol Hill this year. The  
20 director has been up there four times. The deputy  
21 director has been up talking about our efforts  
22 internationally. And we've gotten our chief

1 economist up there, as well, talking about some of  
2 the economics of IP, particularly in the way of  
3 economic espionage.

4 So the PTO has been very, very visible  
5 on the Hill, not particularly on a Trademark issue  
6 yet, but we're looking forward to maybe doing that  
7 next Congress if something comes up that's  
8 relevant. But certainly we're continuing to be  
9 visible on Capitol Hill.

10 My staff also frequently is getting  
11 questions from Capitol Hill staff trying to engage  
12 them on understanding what the Trademark side of  
13 the shop does and the Patent side does. We'll  
14 probably be doing a day in the life at some point  
15 here, if not before the end of the year, then  
16 early next year, again, to kind of walk through,  
17 give folks a sense of what it is that PTO actually  
18 does, because sometimes it's not so clear.

19 I mentioned sequestration. Continuing  
20 to get a lot of questions and interest,  
21 particularly from four areas around the country,  
22 on satellite offices. I'll mention that along

1 side our celebration of the Trademark Expo next  
2 week, the Detroit office will be planning their  
3 own small celebration. We're supporting them to  
4 do that. So we're really trying to pull in as we  
5 establish these new offices, you know, activities  
6 throughout the PTO system.

7 Beyond that, I put a couple other topics  
8 here just for discussion. There's a lot of new  
9 internet associations, a lot of new company  
10 associations, looking at the Hill, looking at next  
11 Congress, and thinking about what legislation they  
12 might want to convince Congress to consider. So  
13 again, we're looking at those.

14 I mentioned the Shield Act. I think  
15 there's going to continue to be a lot of interest  
16 on software patents, so we're watching that, as  
17 well. And we're continually looking for  
18 opportunities to again get up to the hill and not  
19 just bring costume characters, but brief on  
20 substantive issues, as well. So hopefully there  
21 will be more of those as the year progresses -  
22 ends this year and progresses next year. With

1 that, that's all I have for an update. I'll be  
2 happy to answer any other questions that folks  
3 have.

4 CHAIRMAN TEPPER: Thank you, Dana. Are  
5 there questions? Yes, Deb.

6 MS. HAMPTON: I just have a quick  
7 question about sort of the temperature as far as  
8 the Fashion Design Bill. How is that going on the  
9 Hill? Are people leaning more towards it, against  
10 it? I'm just curious.

11 MR. COLARULLI: Yeah, it's curious.  
12 This has been an issue that's been raised now over  
13 three Congresses, bills that have introduced and  
14 haven't made much progress. I think it was raised  
15 in the Senate Judiciary Committee and it passed  
16 out. There was a number of members that  
17 traditionally are supports are intellectual  
18 property bills that voted against the bill, but it  
19 did come out as a majority.

20 The House has a similar process. I  
21 think the real champion there has been  
22 Representative Goodlatte, who's the chairman of

1 the Subcommittee. To the extent that he comes  
2 chairman of the Full Committee next year, we might  
3 see the House take up that bill with some more  
4 vigor, but it's unclear. They've held a couple  
5 hearings on the issue. But I think there's a lot  
6 of at least unresolved issues even in our mind  
7 here at the PTO. So it's one we're watching  
8 closely. Again, I don't think it'll make much  
9 progress this year, but may get some traction next  
10 year.

11 MS. HAMPTON: Thank you.

12 MR. COLARULLI: You're welcome.

13 CHAIRMAN TEPPER: Other questions? All  
14 right. Dana, thank you very much. I do hope  
15 we'll see your picture up on the web site or if  
16 you'll post that to Youtube.

17 MR. COLARULLI: Facebook, yeah.

18 CHAIRMAN TEPPER: And I'll put it an  
19 advanced plug. You'll be hearing more about  
20 Trademark Expo coming up next weekend. I'm  
21 already interested enough. I'm driving up with my  
22 kids and I hope to meet some of these characters

1       myself.

2                       We're now going to turn to a  
3       presentation about the IP Attaché' program. This  
4       is something new. And we're very glad to have  
5       Shira Perlmutter with the program to give us a  
6       little background today. Shira, you can blame  
7       Frank and Dana if you like. We have noticed in  
8       some past meetings looking over the budget the  
9       investment that Trademarks has made in this  
10      program. We've heard a little bit about what the  
11      Attaché' program has done to advance our interests  
12      here and abroad and became interested enough that  
13      we thought it would be good for us to get a better  
14      sense of what you all are doing and of the  
15      program. So we're very grateful for the chance to  
16      hear from you today. And as I said, feel free to  
17      blame those gentlemen and not us.

18                      MS. PERLMUTTER: Well, I think I will  
19      thank them rather than blame them. I'm delighted  
20      to have a chance to meet all of you for the first  
21      time, having just joined the office this year. So  
22      thank you for inviting me to talk. And it's also

1 a pleasure to talk about the IP Attaché' program  
2 because I think it's one of the jewels in the  
3 crown of my office, the Office of External Affairs  
4 here. And it's got a bit of a history already.  
5 It's not entirely new, but it has expanded  
6 tremendously in the last six years or so.

7 So I thought I would talk a little bit  
8 about the reasons for the program and its  
9 background, how it's structured, and the role that  
10 the Attaché's play, and then where we see it going  
11 in at least the near future.

12 Essentially, the IP Attaches' are IP  
13 experts employed by this office who serve as  
14 diplomats in U.S. Embassies and consulates in  
15 selected countries around the world. And the core  
16 of their job is to promote U.S. IP policies, which  
17 is a broad topic, but it obviously includes high  
18 standards for IP protection and enforcement in  
19 their host countries and the regions that those  
20 host countries are based in, and to do so for the  
21 benefit of U.S. Stakeholders. So that's their  
22 mandate and their mission.

1           And they are each supported by country  
2           specific and region specific teams in External  
3           Affairs here at the USPTO, and that means lawyers  
4           from each of the substantive specialty groups. So  
5           it'll be Trademark lawyers, patents, enforcement,  
6           trade, and copyright. So they feed into the work  
7           that the Attaches' do and support them.

8           And I did want to introduce Dom Keating  
9           who's the director of the program who's here.  
10          This is Dom. So he can also answer any very  
11          specific questions about how the program is  
12          running.

13          So when was the program created and what  
14          was the reason for it? Well, it's interesting  
15          because it really came out of the Uruguay Round  
16          negotiations that established the WTO, so it goes  
17          back almost 20 years now. And what happened was,  
18          the Japanese Patent Office started sort of an arms  
19          race by putting an Attaché', an IP Attaché' in  
20          Geneva in 1992 to be able to draw on that  
21          expertise, that technical expertise in the  
22          negotiation of the TRIPS Agreement. And we

1 immediately thought that was a very good idea. So  
2 we created our first Attaché' and sent him there,  
3 and that was Paul Salmon who some of you may know.  
4 Actually I think he's in the room.

5 Paul, the first U.S. IP Attaché', and he  
6 became an Attaché' to the World Trade Organization  
7 in 1993. So he was there through the TRIPS  
8 negotiations helping us further our interests.

9 And about 10 years later, with the  
10 growing importance to us of IP matters in China,  
11 we created an Attaché' position in Beijing and  
12 posted Mark Cohen at the U.S. Embassy there. Some  
13 of you may know Mark. And I'm delighted to say  
14 that Mark this year has now rejoined the PTO as  
15 head of our China team. So we've gotten him back  
16 and are drawing on his tremendous experience.

17 So based on the success of these two  
18 initial postings and then with new funding from  
19 Congress in 2005 that was specifically allocated  
20 to international outreach, we expanded the program  
21 greatly in 2006. And so as of 2006, it included  
22 Attaché' positions in Rio, in Moscow, in Delhi, in

1 Bangkok, and in Cairo. So what we have in  
2 addition to the Geneva postings, we have the Brit  
3 countries, we have Thailand covering the Asian  
4 region, and we have Egypt covering the Middle  
5 East.

6           And each of these Attaches' are supposed  
7 to be responsible not just for the country where  
8 they're hosted, but also the entire region where  
9 they're located, except, of course, for China,  
10 which is its own region in almost every respect.  
11 So that was the outgrowth, the beginning and the  
12 outgrowth of the program.

13           Now, at this point we've added a few  
14 more. We have two more Attaches' in China. So in  
15 addition to Beijing, we now have Guangzhou and  
16 Shanghai. And we've added Mexico City and the  
17 Attaché' there is covering Central America and the  
18 Caribbean.

19           We also now have grown from one Attaché'  
20 in Geneva to two. Some one of them covers the WTO  
21 and the other deals with WIPO and any IP matters  
22 that arise under other UN agencies, which happens

1 more and more as IP becomes more and more, I don't  
2 know if the word is popular, but hot, shall we  
3 say.

4           And we're also looking to expand  
5 further. So as soon as our budget permits, we're  
6 going to add another in Beijing because the work  
7 has gotten so extensive in China and it's such a  
8 priority for us. And we're also looking to add  
9 someone in South Africa. And we're in ongoing  
10 discussions right now about doing that.

11           So just a few words about how the  
12 program is structured and then what the Attaches'  
13 actually do. The programs are structured somewhat  
14 differently in Geneva than in the other countries.  
15 In Geneva, the Attaché' who serves at WIPO and the  
16 UN organizations is detailed to the State  
17 Department and to the U.S. mission in Geneva.

18           And the other one is detailed to USTR  
19 serving at the U.S. mission to the WTO. They both  
20 have a two year term which can be extended to  
21 three years. In all of the other countries, the  
22 Attaches' are assigned to the U.S. and Foreign

1 Commercial Service as limited appointees. That's  
2 the technical term. I'm just learning all these  
3 terms myself.

4 And they each have a two year term which  
5 can be extended to up to five years. I have to  
6 say actually in many respects I'm sorry it's  
7 limited to five years because sometimes when you  
8 have someone who is extremely well attuned to a  
9 particular country or region and not that easy to  
10 replace, which was true recently in Guangzhou for  
11 us, it would be great to be able to continue  
12 drawing on that expertise, but those are the  
13 limitations in the program. And in terms of the  
14 role, I mean I talked about it a bit, but just  
15 essentially to advocate and promote U.S.  
16 Government positions for the benefit of our  
17 stakeholders. And they do this in three primary  
18 ways.

19 First of all, they, and probably most  
20 importantly, they serve as advocates directly with  
21 the host governments. And they get to know the  
22 people in the government who run the IP offices.

1 And they work very closely with them. And they  
2 advocate appropriate and helpful changes in  
3 policies and laws and regulations on IP issues.

4 And they can also bring to attention of  
5 the appropriate level officials in those  
  
6 governments specific problems that are facing U.S.  
7 stakeholders. So that's also an important part of  
8 what they've been able to do.

9 They also do a lot of indirect advocacy  
10 by educating and training government officials in  
11 their country, in their region on IP, and that has  
12 included policy-makers, of course, but also  
13 judges, and prosecutors, customs officials,  
14 police, and, very importantly, examiners in both  
15 Trademarks and Patents. And this can help a lot  
16 getting people to understand U.S. perspectives on  
17 IP matters in a more indirect way, in a very  
18 practical and pragmatic way, and also to get them  
19 to be as effective as possible in protecting IP.

20 And finally, they serve the function of  
21 building grassroots support in the region by  
22 conducting public awareness programs of various

1 types and just being ambassadors for IP more  
2 generally. And a lot of those programs will  
3 include academics, local politicians, business  
4 people, and students.

5           So in doing all of this, they engage in  
6 constant interaction with headquarters here in  
7 Alexandria. And their work is all coordinated by  
8 Dom, drawing on all the resources that we can  
9 offer here, which, of course, includes people  
10 going out to their country and region and helping  
11 put in these various programs and meet with the  
12 governments.

13           They also work very closely with the  
14 other USG agencies in the region, because  
15 obviously they tend to be small teams at all of  
16 these embassies so people need to work together  
17 closely.

18           And I think I've seen this as being a  
19 very important element of their role since I've  
20 come here. They serve as our eyes and ears on the  
21 ground there. So they often can alert us to  
22 important changes and developments before they hit

1 the newspapers and give us more complete and more  
2 accurate reports on what's happening than we might  
3 otherwise be able to get. So I think it's been  
4 extremely positive.

5 We wanted to just give you one example  
6 from Indonesia in particular relating to  
7 Trademarks. The Wahl Clipper Corporation, which  
8 is an Illinois company, was faced with Trademark  
9 squatting from a counterfeiter that obtained 18  
10 registrations for their marks in Indonesia. And  
11 our Attaches' in Bangkok over the years raised  
12 this issue repeatedly with senior management in  
13 the Indonesian Directorate General for IP rights  
14 and provided information on the Indonesian  
15 Trademark procedures to Wahl Clipper, the American  
16 company.

17 And they subsequently were able to  
18 prevail in a cancellation proceeding in Indonesia  
19 and were very appreciative of the help that was  
20 given to them by our Attaches. So we can help  
21 with those kinds of problems and that kind of  
22 interpretation and education, as well.

1           So what do we see for the future? Well,  
2           Director Kappos established a task force to look  
3           at the program and make recommendations for the  
4           future in the fall of 2010. And they developed 18  
5           proposals, which have all been approved. And I  
6           won't go through the whole list, but just to  
7           mention a few of the key proposals, we've  
8           developed a Master Action Plan which incorporates  
9           and prioritizes all the relevant USPTO and other  
10          federal government IP action plans including that  
11          of the IP enforcement coordinator, and that's been  
12          a key tool to make sure that the Attaches' on our  
13          teams here are all focused on the same priorities.

14                 We've also developed standardized  
15          operating procedures which help us interact with  
16          U.S. and foreign industry associations to identify  
17          IP issues of concern and review and enter into  
18          bilateral agreements with host governments to  
19          address those issues.

20                 We've developed a plan to create a pool  
21          of talent, potential Attaches' for the future,  
22          because, again, these people are very specialized.

1 They have to be comfortable operating in the  
2 region, have some knowledge of the region, have  
3 some diplomatic skills, and then, of course, IP  
4 expertise, and that's a rare combination.

5           And then based on very positive feedback  
6 we've had from industry, from other agencies from  
7 Capitol Hill, the task force developed a plan for  
8 expanding the program, and I talked a little bit  
9 about the areas where we're looking to expand.  
10 And finally, we've developed training plans which  
11 include internal training here in External Affairs  
12 before they go out into the field, but also  
13 details to USTR, the IP enforcement coordinator,  
14 the ITA, and the IPR Center, and the government so  
15 they can really learn the wide range of things  
16 that the government is doing.

17           And then we've looked at developing  
18 procedures to reintegrate the Attaches' back into  
19 the PTO when they come back so we can draw on  
20 everything that they've learned while they've been  
21 in the field.

22           So we think it's been a very positive

1 program. I have already seen in my few months  
2 here already that the program is very highly  
3 valued by other U.S. government agencies because  
4 whenever I talk to people, the Commercial Service,  
5 U.S. (inaudible) the State Department about  
6 possibly bringing people into new programs, in new  
7 regions, they're thrilled, they're begging us to  
8 do it, and they find it very helpful in their work  
9 to have that kind of expertise close at hand.

10 So we will be continuing to improve the  
11 program and expand it, and we'd be delighted to  
12 have your input or ideas on other things we could  
13 do moving forward. So thanks very much. Happy to  
14 answer any questions. Either I can or Dom can if  
15 they're beyond my can.

16 CHAIRMAN TEPPER: Shira, thank you very  
17 much. And obviously, looking around the room, we  
18 had no idea the program was this far reaching. So  
19 thanks to all of the participants we have here, as  
20 well. Other questions for Shira? Yes.

21 MS. MCLEOD: Shira, I'm just curious,  
22 what are the Trademark issues specifically that

1 the attaché's are looking at and what other issues  
2 are they looking at? I'd be curious to know sort  
3 of what the focus is now currently.

4 MS. PERLMUTTER: Well, generally I would  
5 say the focus tends to be the major bilateral  
6 issues we have with the countries in the region,  
7 whatever they are at the moment. So they can be  
8 trademarks, they can be patents, they can be other  
9 things. I will turn it over to Dom who can talk  
10 about some of the specific Trademark issues the  
11 attaché's are currently working on.

12 MR. KEATING: Sure. In countries like  
13 India, they're working on the Madrid protocol  
14 implementation. They're working on counterfeiting  
15 as a common problem that cuts across all the  
16 regions that we're in. And perhaps I'll tell a  
17 little story to illustrate the problem. Dorie  
18 Berkovich, who is our IP attaché' in Rio,  
19 discovered that counterfeiting was a huge problem  
20 in Brazil, so he created a three day program that  
21 pulled together the chiefs of police and their  
22 deputies from the 14 largest Brazilian cities to

1 talk about this problem. And at the end of the  
2 program, he asked them to compile a wish list of  
3 legislative changes that would help to address the  
4 problem.

5 They did, and that was subsequently  
6 provided to the President's office and then  
7 introduced into the Brazilian Congress as the  
8 first bill in 2011. So it's a big problem. The  
9 IP attaché's are focusing on counterfeiting and I  
10 think they're making progress on it.

11 In Geneva, our IP attaché's are working  
12 on geographical indications, which is an issue  
13 that the Europeans, as many of you know, have  
14 different ideas about how to approach than the  
15 U.S. government and the U.S. Industry. And I  
16 think our attaché's have been very effective in  
17 advocating U.S. positions on those geographical  
18 indications with other delegations in building  
19 support for U.S. positions. Thanks.

20 MS. PERLMUTTER: Dana was just pointing  
21 out to me, we should also mention a lot of work on  
22 bad faith Trademark registrations in China that's

1       been a very major issue for us that the China team  
2       and the attaché's have been working on.

3                   CHAIRMAN TEPPER: Thank you. Other  
4       questions? Yeah, please, Cheryl.

5                   MS. BLACK: Sure. Thank you for the  
6       presentation. It was very, very enlightening. I  
7       did want to ask you about the renewal. You were  
8       say that there's a two to five year term and  
9       that's it. And I could see the benefit of  
10      extending that because they're now accustomed to -  
11      acclimated to that country.

12                   Is there any consideration of having a  
13      renewal of the terms or - even if they come back  
14      to the U.S. for a period and then return to that  
15      country, or, you know, is anything in the works to -  
16      that end?

17                   MS. PERLMUTTER: Good questions. And  
18      we've been looking at what we can do. My  
19      understanding is that, you know, it's a legal  
20      restriction on the five years so we can't do  
21      anything to extend it. But it is possible to  
22      bring someone back, and if they're back for at

1       least one year, they can then be reposted again.

2                   I think they have to compete again for  
3       the position, so they would have to be the best  
4       qualified applicant. But obviously they're likely  
5       to be very well qualified after all that  
6       experience. Hard to imagine how you could have  
7       better qualifications than that. I don't know if  
8       Dom wants to add anything.

9                   MR. KEATING: This is an unfortunate  
10       situation. And the reason why we're constrained  
11       legislatively is because of the current structure  
12       of the program which affects this particular issue  
13       and other issues. Attaché's are assigned to the  
14       U.S. and Foreign Commercial Service which is our  
15       sister agency in Commerce who happens to have a  
16       foreign service of its own. So we're working  
17       through their regulations right now.

18                   And as Dana may have mentioned earlier,  
19       there are some legislative proposals that could  
20       potentially open up different options in terms of  
21       the structure of the program. But this is the  
22       structure that we are working under at this point

1 in time. Thanks.

2 MS. BLACK: Thank you.

3 CHAIRMAN TEPPER: Thank you. Yeah,  
4 please, Dee Ann.

5 MS. WILSON: You mentioned that Japan  
6 started this type program. Are there other  
7 countries that are also doing the same thing?

8 MS. PERLMUTTER: That's a great  
9 question. And, yes, they are, but I don't think  
10 anyone at this point has a program nearly as  
11 extensive as we do. But what I find interesting  
12 is very, very many of our just ongoing bilateral  
13 conversations with other governments, they're very  
14 eager to hear about our attaché' program, they're  
15 eager to expand theirs, and they're especially  
16 eager for our attaché's to coordinate with theirs  
17 in each country where they are located.

18 And it's interesting because that  
19 includes Japan, the EU, and some of the specific -  
20 some of the individual EU member countries like  
21 the UK, which has started to be very active in  
22 this area. And I find it interesting personally

1 that you've got both the EU level and the  
2 individual member states doing the same thing.  
3 But the impression I have - and Denmark I think  
4 has also been very active, interestingly enough.

5 I think from their perspective, they're  
6 interested in helping their companies trying to do  
7 business in these other countries. And,  
8 obviously, China for many of them is also a big  
9 focus.

10 MS. WILSON: Thank you. That was  
11 helpful. One of the things you mentioned just  
12 then was that they're interested in helping their  
13 companies. If a company is interested in finding  
14 out more about what you do or if a company has an  
15 issue that they would like to try to raise so that  
16 the USPTO might put some focus on that in trying  
17 to train their attaché's, how would they best  
18 contact you?

19 MS. PERLMUTTER: Send an email to either  
20 me or Dom. So it's both of our full names, so  
21 it's Shira.Perlmutter@uspto.gov, or Dom's is  
22 Dominic.keating@uspto.gov. And we'd be more than

1 happy to help. That's what the program is all  
2 about. So we want to hear what the problems are  
3 and what the issues are so we can try to address  
4 them.

5 CHAIRMAN TEPPER: Yeah, please, Jody.

6 MS. DRAKE: Following up on Dee Ann's  
7 question, is there currently in place a public -  
8 do you do public outreach, appearing, you know, on  
9 programs, making companies aware of, you know, the  
10 sort of relief that they can possibly get through  
11 your agency?

12 MS. PERLMUTTER: Yeah. We do, and maybe  
13 one idea is to try to think of other ways to do  
14 more. But we do certainly in the countries and  
15 regions the attaché's are regularly appearing, you  
16 know, working with Chambers of Commerce, for  
17 example, AmCham, or the local one, and talking  
18 about what they do and what they can do. And we  
19 certainly do in our global IP attaché' programs,  
20 especially the ones we do for SME's, but also all  
21 of the training programs. But I think there's  
22 probably more we can do, and we will think about

1       it, and if you have other ideas, we'd be delighted  
2       to hear them.

3                   MS. DRAKE:  I was more interested in  
4       U.S., you know.

5                   MS. PERLMUTTER:  Of course.

6                   MS. DRAKE:  Interested in knowing what  
7       outreach goes on here, but that's just --

8                   MR. KEATING:  Every December, the IP  
9       attaché's all come back to Washington for  
10      consultations.  And at that time, we do invite  
11      some industry associations in to talk with them.  
12      The U.S. Chamber also hosts a full day event for  
13      the attaché's where they can come and speak with a  
14      wide range of companies.

15                   And we are considering creating a second  
16      series of attaché consultations which would be in  
17      the spring or summer and perhaps getting out to  
18      another city.  And if you have any ideas about  
19      that, we'd be interested in those ideas.

20                   We'd also like to possibly line the  
21      spring consultations up with the meeting of a  
22      larger organization like - it could be INTA or it

1       could be AIPLA or IPO, some other organization  
2       like that.  Thanks.

3                   MS. DRAKE:  Thank you.

4                   MS. PERLMUTTER:  One other comment that  
5       I forgot to mention sooner is, another thing I  
6       found interesting, we just came back from a week  
7       of non-stop bilateral meetings in Geneva at the  
8       WIPO General Assembly and so we were talking to a  
9       lot of other countries, and what I found is, in  
10      all of the countries where we have attaché's, they  
11      are really happy to have them.

12                   They've very happy to have them there  
13      and work with them and they see it as a very  
14      useful conduit to the U.S. government where they  
15      can form that kind of personal relationship, have  
16      someone they can get to know in their time zone  
17      who can come into their office for meetings.  So  
18      it seems to be just a very useful communication  
19      device from that perspective, as well.

20                   CHAIRMAN TEPPER:  Thank you for that.  
21      Yeah, we're generating a lot of questions.  
22      Please.

1 MS. BLACK: Are there any attaché's from  
2 other countries in the U.S.?

3 MS. PERLMUTTER: Yes, there are. The  
4 one I've had the most contact with personally is  
5 from China, and he's based here in Washington,  
6 very fluent in English, comes to all of the  
7 bilateral meetings both here and in Beijing of an  
8 appropriate level and does quite good. And, Dom,  
9 do you know others?

10 MR. KEATING: Sure. Japan, Korea, and  
11 France also have IP attaché's based in Washington.  
12 Thanks.

13 CHAIRMAN TEPPER: Thank you. Any other  
14 questions? Are there questions from the public?  
15 All right. Well, I do want to thank you. This  
16 was very informative for us. We look forward to  
17 learning more about how, you know, I know lots of  
18 associates and industry groups here would  
19 certainly welcome the chance to participate and to  
20 help to strengthen the message so we'll look  
21 forward to hearing about those developments.

22 Dana mentioned some pending legislation.

1       So certainly stay tuned for developments.  
2       Anything that we can do to help to formalize and,  
3       you know, smooth out some of the edges around the  
4       program I know we'd be interested in learning  
5       about. All right. With that, we'll keep moving  
6       forward.

7                       I'm pleased to now turn over to  
8       Commissioner Debbie Cohn who's going to review  
9       operations. We have, as you probably know, just  
10      closed a fiscal year here at the PTO just about  
11      the first of October. So she looks a lot less  
12      tired than she probably ought to be. It's been a  
13      very active year. And we'll get an update. Thank  
14      you.

15                      MS. COHN: Thanks so much, Maury. And  
16      I'd like to extend my welcome to Dee Ann Weldon  
17      Wilson and Kathryn Barrett Park, welcome back.  
18      And so let me launch right into the report here.  
19      Okay.

20                      So first I'm going to talk to you about  
21      our performance statistics for fiscal year 2012.  
22      As Maury mentioned, we just ended the fiscal year

1 and so this meeting is perfectly timed. And the  
2 information is actually hot off the presses.

3 And I am very pleased to report, and I  
4 don't think that you can actually see the numbers  
5 up there, but those of you who have handouts can  
6 see. I'm pleased to report that we have met and  
7 exceeded all of four goals in the Trademark  
8 organization. And I will go through some of them  
9 with you.

10 We have certain goals that we report on  
11 to the Department of Commerce and to Congress and  
12 those include quality of examination. I am very  
13 pleased to report that we exceeded our first  
14 action and final action compliance goals in that  
15 area, and that measures the legal decision-  
16 making. We have a third quality measure that we  
17 just started in fiscal year 2011, and that is  
18 measuring - it's called the Exceptional Office  
19 Action, and it's measuring the quality over and  
20 above the legal decision-making. It's measuring  
21 the quality of the evidence, the writing, the  
22 search, you know, all of the components that are

1 very important in a communication, but don't  
2 directly always affect the legal decision-making.

3           So we know those are important to our  
4 stakeholders and our applicants. And so we have  
5 started measuring that, as well. We have an E  
6 government measure which measures the percentage  
7 of applications that are processed completely  
8 electronically from beginning to end as opposed to  
9 just measuring the percentage of applications that  
10 are filled electronically, which is extremely  
11 high, over 98 percent. Now we're focused on  
12 trying to get applicants to continue to  
13 communicate with us electronically and to allow us  
14 to communicate with them electronically.

15           And so that number is 77 percent this  
16 year. We are trying to move that even higher.  
17 And I think the reason it's even that high is that  
18 we've made a number of concerted efforts over the  
19 past year to find out what it is that is stopping  
20 people from communicating with us electronically  
21 or authorizing electronic communication. And  
22 we've tried to make some changes, and we've made

1 some changes actually to try to facilitate people  
2 getting into the electronic system. So we're  
3 going to continue to work very hard on that.

4 Application filings were up this year.  
5 They were up about four percent, and that's  
6 approximately what we predicted from last year.  
7 So I wanted to congratulate our Budget Office led  
8 by Karen Strohecker for her wonderful crystal ball  
9 and her ability to make those predictions.

10 You know, a lot of things go into that  
11 mix and a lot of unknowns. It's the economic  
12 forecast, it's, you know, Trademark applications,  
13 as you know, are pretty volatile. They go up and  
14 down from month to month. And, you know, we need  
15 to try to make as accurate a prediction as we can  
16 because that informs our hiring decisions and a  
17 lot of other decisions that we make.

18 And so I'm glad for two reasons. I'm  
19 glad we were able to accurately predict, but I'm  
20 also glad that filings went up because I think  
21 it's a very good sign for all of us. And  
22 hopefully that will continue to go up in the

1 future. And we are predicting that for the  
2 future, as well. Production, disposals, all of  
3 that, we came in above our targets. Pendency, our  
4 first action pendency was - we ended the fiscal  
5 year at 3.2 percent, I'm sorry, 3.2 months, which  
6 is 3 months and 6 days. And that's within our  
7 target range of 2.5 to 3.5 months. So our goal is  
8 to stay within that target range. It's not to  
9 drop it down below 2.5 months.

10 Our disposal pendency, which is the  
11 pendency from the date of filing to the issuance  
12 of the notice of allowance, the abandonment or the  
13 registration, our disposal pendency is measured in  
14 two ways. One is the overall pendency including  
15 suspended and inter party's cases. And so our  
16 average, when you include those cases, was 12  
17 months. And when you take out those suspended and  
18 inter party's cases, our average was 10.2 months  
19 to registration, notice of allowance, or  
20 abandonment.

21 So all of that is great news. I also  
22 want to talk about our other areas that we don't

1 necessarily report on to Congress and Department  
2 of Commerce, but which are extremely important to  
3 us getting our work done, and that's our  
4 examination support areas, our service areas, post  
5 registration, Trademark assisted center, all of  
6 the components in the Trademark organization that  
7 have to be working properly in order for our users  
8 to get what they need in a timely manner and with  
9 high quality. And our support units, all of our  
10 units, each and every one of them met their target  
11 goals both in pendency and in quality.

12           So I'm really pleased to report all of  
13 this to you. And I also wanted to take this  
14 opportunity to thank each and every one of our 600  
15 plus Trademark employees for a job very well done.  
16 So thank you.

17           I think that's all for the statistics.  
18 If anybody has any questions on that, I'd be happy  
19 to answer them. Cheryl.

20           MS. BLACK: You were mentioning about  
21 the filings and the factors that go into it and it  
22 effects hiring and so I wanted to ask you about

1 hiring for the future?

2 MS. COHN: Sure. And I assume you mean  
3 examining attorney hiring?

4 MS. BLACK: Yes.

5 MS. COHN: Okay. And actually that is a  
6 very important component. We hired a number of  
7 people this fiscal year. I think the number may  
8 have been 34. We had separate hirings, groups of  
9 between 10 and 15 employees. For next fiscal  
10 year, we are planning on hiring 26 examining  
11 attorneys. And we're going to hire our first  
12 group in January, between 10 and 15 attorneys in  
13 January. And then we'll see where we are. You  
14 know, we may have a larger group than we expect  
15 later on in the spring or we may have a smaller  
16 group. That depends on where we are with regard  
17 to inventory, filings, pendency, you know, all of  
18 those factors. And so that's our plan. But we  
19 are definitely hiring a group in January. Okay.

20 So let me move on. I have a couple of  
21 items that are on the agenda that have to do with  
22 requests for comments or information and the first

1 has to do with the adjustments to fees.

2 We have a notice out there requesting -  
3 a notice of inquiry requesting comment on a  
4 possible fee adjustment for filings. And the idea  
5 behind that adjustment would be to try to  
6 incentivize the electronic filing and  
7 communication that I talked about a few minutes  
8 ago.

9 The idea is that it may make sense to  
10 offer a financial incentive for people who commit  
11 to using the electronic systems exclusively and  
12 not just filing electronically on a TEAS form and  
13 then sending us paper or forcing us to send them  
14 paper. So we're looking at that. We have gotten  
15 quite a few comments on that. And I have to say  
16 that people are generally supportive of it,  
17 overwhelmingly supportive. Our date is October  
18 22nd, that's the final date for comments due. And  
19 we will have a much better idea after that date in  
20 which direction we're going in and we will  
21 certainly communicate that.

22 The other notice we have is a request

1 for comment regarding the Section 8 and 71  
2 Affidavit of Use Time Period. So the question is,  
3 or the proposal is to reduce the time, so instead  
4 of filing between the fifth and sixth year, the  
5 registrant would be required to file between the  
6 third and the fourth year.

7 And the rationale behind that would be  
8 to try to get rid of dead wood on the register, to  
9 try to increase the accuracy of the register. And  
10 we have gotten quite a few comments on that. The  
11 deadline for that was extended to November 5th.  
12 We are waiting for some industry group comments  
13 which we expect to get. And we've gotten quite a  
14 few individual comments.

15 And I have to say that there's really no  
16 overwhelming position that these comments are  
17 taken. It's a little bit of a mixed bag. They're  
18 very, very helpful comments. Many of them are  
19 very thoughtful. And we really appreciate people  
20 telling us how they feel about this issue. And  
21 after November 5th, we will be reporting back and  
22 letting you know what the temperature is on this

1 issue. Now I'm going to move into some recent  
2 developments or things we've been doing this  
3 fiscal year. And the first thing I want to  
4 mention is the ID manual. And the ID manual  
5 obvious affects both internal and external users.  
6 And we have been talking about redesigning our ID  
7 manual to better meet the needs of our employees  
8 and our external users.

9 Over the past year, we've been reaching  
10 out to our examining attorneys for ways to improve  
11 the manual. And we have gotten a lot of feedback  
12 on that. And we're proposing some changes and  
13 increased training and better resources. So  
14 that's in the works in the very short term.

15 We've also reached out to stakeholders.  
16 And one thing that we've heard from our  
17 stakeholders is that we need to have better  
18 entries in the ID manual that more accurately  
19 reflect what's actually going on in industry, and  
20 particular industries that change on a rapid  
21 basis.

22 So we're working. We've begun a project

1 to work with some of our stakeholder groups to get  
2 input, to improve the content and make sure we  
3 have more expertise in the entries in the manual  
4 so that people will be able to rely on the entries  
5 and see the most up-to-date information. And  
6 we've started working with groups from INTA and  
7 from IPO on this project. And we're very happy to  
8 have their help and assistance and they were very  
9 anxious to help us with this.

10 Another thing that we're doing in the ID  
11 manual area is actually doing some IT  
12 enhancements. And we have a couple of things in  
13 the works in the short term. And one of those  
14 things is what we call an ID checker, which will  
15 mean when you put an entry into the TEAS form, you  
16 will see right away whether it's in the manual or  
17 not. So we think that will be very helpful to  
18 applicants.

19 The other thing we have in the works in  
20 the short term is something we call an ID filter.  
21 So I'm sure all of you are aware that we have many  
22 entries in the ID manual that have come in through

1 suggestions for TEAS Plus. And so a lot of these  
2 entries may not be that useful to applicants on a  
3 regular basis, and this ID filter will give you  
4 the option. You'll always have the option of  
5 filtering out those extraneous sort of submissions  
6 when you're doing your work and looking at the  
7 manual.

8           So those are in the short term. We have  
9 some other things in the works with the ID manual  
10 that you'll hear about later. We're trying to  
11 accelerate our work on a number of IT projects and  
12 the ID manual is one of them. The next thing I  
13 want to mention is something called Idea Scale  
14 which hopefully you're all familiar with by now.  
15 In January of 2011, we began offering this as a  
16 pilot. It's an alternative method of providing  
17 comments on specific chapters of the TMEP and  
18 examination guides. And we have an examination  
19 guide up there right now. It'll be there until  
20 the end of October. And it's on web specimens.  
21 And so this gives you the opportunity to actually  
22 make comments and see what other peoples' comments

1 are.

2           And this lets us get input from our  
3 stakeholders. And we also have this available for  
4 our examining attorneys. We want to get input on  
5 this before the policy decisions are finalized.  
6 And this will help us make better decisions in the  
7 long run I think and better documents.

8           The next item is our new TMEP. And  
9 there are two things I want to mention. First, we  
10 actually have the current version of the TMEP, the  
11 8th edition, available in a new format. And you  
12 can see it on the web. And I encourage you to  
13 look at it if you have not already done so.

14           It contains some enhanced search  
15 features. And it will be the way we will publish  
16 the TMEP in the future, the future being the end  
17 of this month when we come out with a new edition.  
18 So please, if you haven't already done so, take a  
19 look at this while it's up there during this  
20 interim basis, interim phase rather.

21           So it's got some enhanced functions and  
22 that's great. The biggest advantage I think for

1 us internally is, it allows us to better control  
2 the content of the TMEP to more easily change the  
3 content and will allow us to publish a TMEP more  
4 frequently.

5 So we're thinking that we may want to  
6 publish twice a year rather than once a year  
7 because now we'll be able to do so. We don't want  
8 to inundate with new publications every month or  
9 even every quarter, but we're thinking that twice  
10 a year might be the way to go on this. And I'd  
11 certainly be interested in your input on that  
12 issue.

13 The next item is the enhanced electronic  
14 Official Gazette. I'm very pleased to report that  
15 the Government Printing Office is sending out  
16 their notices to all 150 subscribers of the paper  
17 OG world-wide. And I don't know if the USPTO  
18 still has three of those subscriptions, but when  
19 we last checked, we did. So if you're getting a  
20 paper OG, you might want to hold onto that last  
21 copy because it may be worth something some day.  
22 The last paper OG will be published on December

1 25th. And after that, no more paper OG. The  
2 current electronic OG that you have in PDF is in  
3 that very sort of clunky format because of our  
4 restrictions with the paper publishing.

5           Once we get rid of the paper publishing,  
6 we have a lot of opportunity to change the  
7 electronic version, to put it in a web based  
8 format which was exactly what we're going to do.  
9 So we're working on that project. We are planning  
10 on having a brand new enhanced Official Gazette by  
11 the end of this fiscal year, so by the end of  
12 fiscal year '13.

13           And we are very anxious to get your  
14 input on it. We're going to have a prototype  
15 available for you to look at. We have already had  
16 two focus groups where we've had people providing  
17 some comments and directions on what they might  
18 like to see in a new electronic OG. So that gave  
19 us some indication of what's important to people.  
20 But you will have another opportunity to certainly  
21 comment on what the final product will be. So  
22 we've very excited about that and we're working

1 very closely with the OCIO folks to make that  
2 happen.

3           And in the meantime, just this past  
4 month, just in September, we changed the way we  
5 send the link in the Notice of Publication for the  
6 Official Gazette, for the current version. So now  
7 instead of having to page through the PDF to find  
8 your mark, your link takes you directly to the  
9 page. So we were working on that improvement and  
10 we were happy that we were able to implement it  
11 last month. And hopefully you all have seen that  
12 by now or will see it soon.

13           The next item is TSDR, Trademark Status  
14 and Document Retrieval. We released a new  
15 version, 2.0, in September. And all of the hyper  
16 links that you have displaying the old TAR  
17 information were redirected to TSDR. So that  
18 should be working very smoothly by now. We had a  
19 little bit of a bumpy start to that, but  
20 everything should be good.

21           So we have some new features in our TSDR  
22 and that is that you can now review assignment

1 details and you can filter the assignment data by  
2 conveyance type, which is a big improvement. You  
3 can review multiple documents at the same time in  
4 separate windows. You can also file specific  
5 identifiers allowing direct access to case data,  
6 to specific case data and documents. We're now  
7 listing the Notice of Allowance date which was  
8 missing from the old TSDR. And we now have hyper  
9 links to parent and child applications that have  
10 been divided. So those are some of the major  
11 improvements I think for this release.

12 Another item, I'm sort of shifting away  
13 from IT now, and that is, I'm going to talk about  
14 the basic facts about Trademarks booklet. We have  
15 updated that and it will be available shortly in  
16 paper copy. It's available on our web site right  
17 now. And the group responsible for this is called  
18 our Pro Se Working Group.

19 And I want to mention this because, you  
20 know, it's sometimes a challenge, you know,  
21 dealing directly with pro se applicants who have  
22 varying degrees of sophistication or knowledge

1 about the Trademark process. And we have to be  
2 very careful to make sure we explain things, you  
3 know, properly to them and maybe differently than  
4 we would to an experienced practitioner.

5           And so we have a working group that  
6 focuses on these issues. And they put together  
7 this basic fact about Trademark, the information  
8 booklet revision, and I think it's terrific. It  
9 has some new information in it. It talks about  
10 how Trademarks and domain names and business  
11 names, registrations all differ, which is always a  
12 confusing topic for pro se applicants. And it  
13 talks about the importance of conducting a  
14 Trademark search. And also sometimes the  
15 applicant may need to hire a private attorney and  
16 the importance of doing that and when that might  
17 be appropriate. So all of that plus more is in  
18 our new version of the basic fact booklet so you  
19 might want to take a look at it, it's online.

20           Moving now to the TM-5, which is the  
21 international group that was formally called the  
22 Trilateral. It is not called the Trilateral

1       anymore because there are five members. It is the  
2       United States, Japan, the European Union, Korea,  
3       and China. And Korea and China just recently  
4       joined the TM-5.

5               And so we are next meeting at the end of  
6       this month, the end of October, in Barcelona,  
7       because the EU is hosting the meeting. And so  
8       we're going to be working on certain harmonization  
9       and collaboration projects and continuing our work  
10      from the past.

11             And just to give you some examples of  
12      those projects are the development of an ID list,  
13      and identification list, where all of the entries  
14      will be uniformly accepted by all of the member  
15      countries. So that's just one example of some of  
16      the projects we're working on. We're also working  
17      on the bad faith filing issue. And we're working  
18      on training for that and trying to encourage all  
19      of the member countries to participate. And we're  
20      very enthusiastic about this bad faith filing  
21      training. We've had some in the past and we're  
22      hoping to continue it this year actually.

1           Now I just want to talk a little bit  
2           about stakeholder outreach, about outreach in  
3           general and just a couple of different areas. I'm  
4           sure you all know, we've been having these  
5           roundtables. The USPTO and INTA have been working  
6           together to have roundtables for Trademark  
7           practitioners around the country. And we've had  
8           quite a few of them.

9           We started it this past January. And  
10          our latest stops include Seattle, which we just  
11          were there in September. We're going to  
12          Charlotte, North Carolina next week, this week or  
13          next week, a Trademark's Administrators  
14          Conference, so we'll be having one in conjunction  
15          with that. And then we'll be going to Detroit,  
16          Michigan to have one at our new satellite office.

17          And we've gotten great feedback on  
18          these. They're small groups, no more than 25  
19          people, and we just have a chance to exchange  
20          information, to hear issues directly from  
21          practitioners, to have them exchange information  
22          and practice tips. And it's been a very good and

1 constructive meeting each and every time. So  
2 we're hoping to continue those into the future.  
3 So that's dealing with experienced Trademark  
4 practitioners.

5 Another area that we've begun extensive  
6 outreach in is really for the non-Trademark  
7 practitioners and the public entrepreneurs,  
8 businesses, small businesses, students, and trying  
9 to give them more information about trademarks,  
10 the importance of trademarks, the importance of  
11 protection, the importance of starting early and  
12 finding out what you need to know before you  
13 select the mark and actually have a selective good  
14 mark.

15 So we have this really - I think it's a  
16 very robust outreach program. And we've been  
17 going all over the country to places like the  
18 Small Business Association, Women's Business  
19 Center annual conference, the U.S. Black Chamber  
20 annual conference. We've been at the Bethesda  
21 Rotary Club in Maryland. We've been to the  
22 National Society of Hispanic MBA's, the MIT

1 Enterprise Forum, just to name a few of the many  
2 places.

3 And Craig Morris is spearheading this  
4 program. He's been doing all of the traveling and  
5 speaking on it. And many of you know Craig from  
6 the TEAS days. He was our TEAS program manager  
7 for quite a few years and he is now launched on  
8 this program. And by all accounts, it's highly  
9 successful and we expect to continue it full force  
10 into the next few years.

11 The next outreach I want to talk about,  
12 Dana mentioned the Trademark Expo which is next  
13 week. And, Maury, I'm so glad you're coming back  
14 for that. I look forward to seeing you there on  
15 October 19th and 20th. And it's really an  
16 educational event. It is to educate the public  
17 about trademarks, about the importance about, you  
18 know, how bad counterfeiting is. It's all  
19 trademarks all the time for two days.

20 Last year we have 15,000 people attend.  
21 It was a fabulous event. And this year it's going  
22 to be even better. We have more exhibitors. We

1 have exhibitors like Geico, we have Mattel coming.  
2 We have a number of government agencies. It's  
3 just going to be a terrific event.

4 We have NASCAR coming. And we have some  
5 informational seminars that our folks will be  
6 presenting. I'm just going to read off some of  
7 them to you so you get an idea of what we're  
8 doing. What every small business should know  
9 about intellectual property, Trademarks 101  
10 covering basic facts, an overview of our online  
11 tools and resources, common mistakes to avoid when  
12 filing, counterfeiting and piracy, why buy legit,  
13 and respecting the Indian brand, the Native  
14 American art and imitation. So those are the  
15 seminars we'll be hosting throughout the day on  
16 each day. So I hope you come.

17 And as Dana mentioned, I'm going to be  
18 on the Hill later today. Before we go to the  
19 Hill, I'm making a stop at Children's National  
20 Medical Center with the costume characters, so  
21 we'll give them a taste of what's going on in the  
22 Trademark world, and it's always a lot of fun to

1 see them. So I think that I have reached the end  
2 of my items. And I will be happy to answer any  
3 questions.

4 CHAIRMAN TEPPER: Thank you very much,  
5 Debbie. I want to pause for a second because we  
6 do get used to I think looking over these  
7 performance measures, and oh yeah, ho hum,  
8 Trademarks exceeded all objectives once again.  
9 That takes a lot of effort.

10 We know we have great leadership here at  
11 the PTO. But there are not a lot of things that  
12 we applaud on this Committee, and I think it's  
13 appropriate, and I'm glad that we gave a round of  
14 applause to all the employees here on Trademark  
15 Operations. I'm lucky enough to speak with some  
16 of you from time to time, examining attorneys who  
17 go above and beyond to pick up the phone and call  
18 with a question to help us out, and I want to  
19 compliment. It takes lots and lots of folks  
20 working out there. We don't get to see you very  
21 often, but we appreciate all of the work that  
22 comes out of this office and the great leadership

1       that we have.

2                   I think I speak for everyone here on the  
3       Committee. We feel very lucky to be volunteers  
4       because we really admire and support everything  
5       that's going on here. So thanks for a great year  
6       in Trademarks.

7                   I would also encourage - Debbie  
8       mentioned just a couple of things out there. You  
9       have time and we really do want your feedback.  
10      October 22nd is the deadline to respond to the -  
11      I'll get my Notice of Inquiry and request for  
12      comments backwards. But on proposed reduction of  
13      fees, if you don't want to pay less, let us know  
14      right away. But obviously, the PTO can use your  
15      specific thoughts and recommendations on that, as  
16      well as on the issue of the Section 8 and Section  
17      71 filing window. November 5th is the deadline  
18      for that.

19                  And I think as you heard, there are lots  
20      of different views and ways to look at this. So  
21      this is your chance to certainly take part in  
22      shaping the process and the Trademark system for

1 years to come. And I encourage everyone to take a  
2 look into those and help us out with your  
3 information. Do we have questions or comments for  
4 the Commissioner? Please.

5 MS. BLACK: I do have a comment on the  
6 TMEP and the TSDR enhancements. I have noticed  
7 them, I've been using them, and they really do  
8 make a difference, so it's nice to see. And I do  
9 kind of want to piggyback on what Maury said.

10 I was reading about Ritz Carlton, and as  
11 great as the company was years ago, they always  
12 felt the need to continue improvements and look  
13 for ways to do even better and to make those kind  
14 of enhancements and so I kind of look at Trademark  
15 Operation doing the same thing. It's been doing  
16 well, but you're continuing to look for ways to  
17 enhance and improve it and so we do salute you on  
18 that.

19 MS. COHN: Thank you very much, Cheryl  
20 and Maury. And it's always been a pleasure  
21 working with TPAC and we really value your  
22 continued input and support.

1                   CHAIRMAN TEPPER: Well, I think it's  
2 also great we have Ritz Carlton's Trademark  
3 attorney in the room today in the audience,  
4 Cheryl, so that was an excellent example. And,  
5 Ray, I think I just cut you off. Go ahead.

6                   MR. THOMAS: Yes. I just have a couple  
7 of comments. Commissioner, you mentioned the  
8 focus groups regarding the new Official Gazette.  
9 As you know, I participated on behalf of TPAC and  
10 I just want to thank you for the invitation for TPAC  
11 to formally participate in those discussions.

12                   And aside from that, just generally  
13 commend the office with regard to its ongoing and  
14 continued efforts to make the experiences of users  
15 more pleasant with that project just being one of  
16 many.

17                   MS. COHN: Thanks very much, Ray.

18                   CHAIRMAN TEPPER: Okay. Questions from  
19 the public? Comments? Great. I do want to put  
20 in one last plug. Don't forget Trademark Expo is  
21 coming up next weekend. Those of you who are in  
22 the area, please do come out. Anyone who needs a

1 ride up the I-85 or I-95 corridor on Friday and  
2 doesn't mind riding with my 10 year old twins, let  
3 me know, I'd be glad to bring you on up, too. So  
4 we're looking forward to the chance to learn a  
5 lot. And I do hope you'll have the chance to come  
6 by if you're near the office. Okay. We're going  
7 to turn now to some international and policy  
8 updates. We're glad to have Sharon Marsh.  
9 Sharon, I mangle your title every single time and  
10 I'll apologize. Deputy Director for Trademark  
11 Policy. Did I come close?

12 MS. MARSH: Commissioner, we use Deputy  
13 Commissioner.

14 CHAIRMAN TEPPER: Thank you. I gave you  
15 a promotion. You're welcome.

16 MS. MARSH: Yeah. Thank you. We just  
17 wanted to give you a short update this morning on  
18 our project to collect some data about  
19 registrations at the point where the Section 8  
20 affidavit is filed. This is five to six years  
21 after registration. And we're trying to collect a  
22 little bit of information about whether

1 registrants are keeping their list of goods and  
2 services accurate.

3           It's been, frankly, a slow process  
4 because we had to make some CFR rules changes  
5 before we could start the program. So if you  
6 recall, the final rule took effect last summer.  
7 And finally then in late summer, in July and  
8 August, we started our project.

9           And we have a group of senior attorneys  
10 who are randomly - are taking a group of randomly  
11 selected registrants who have filed Section 8's  
12 and they are asked to provide additional proof of  
13 use for two additional items per class. This will  
14 take place over a period of probably about six  
15 months. And so far everything is going fine. We  
16 do not have enough information yet to be able to  
17 report results. As soon as we get that  
18 information, I know we're all eager to see some  
19 results, we will share that with the Committee.  
20 Keep in mind also that, you know, the letters go  
21 out and they have six month response clauses. So  
22 it could be a number of months yet before we have

1       some data.

2                   I did talk to one of the attorneys who's  
3 participating in the project earlier this week and  
4 she reported that there have been one or two  
5 registrants who have already responded to our  
6 request, and their response has been to delete all  
7 goods and services except the goods and services  
8 to which the specimens filed with the initial  
9 Section 8 pertain. So that was interesting. But,  
10 come on, 2 out of 500, so stay tuned. We'll have  
11 more information, I hope, at the next meeting.

12                   Regarding Madrid, I don't think we have  
13 anything we were going to discuss today, Maury.  
14 There was a meeting last summer, a discussion of  
15 some technical issues, but no news that we need to  
16 discuss today.

17                   CHAIRMAN TEPPER: Thank you, Sharon.  
18 Those of you who may take part in this program,  
19 you know, I've tried, it's a little bit like your  
20 odds of getting audited. We're sorry if you  
21 happen to be one of those. You know that the odds  
22 are remote. But I think it will be certainly very

1 valuable information for the office. Remember  
2 that we do work in a common law country and we  
3 have a used based register. So I know it will not  
4 be convenient for anyone who has to provide the  
5 additional specimens, the additional information  
6 to the office.

7 But I think for those of us who rely on  
8 that register, we sometimes forget. We spend a  
9 lot of our time clearing marks and we look at the  
10 PTO to provide us accurate data. So we certainly  
11 want to step back and remember that it's in  
12 everyone's interest for the register to reflect  
13 reality in the market as closely as possible.

14 That being said, I'm not going to give  
15 you my phone number or email address if you have  
16 to provide specimens, but we'll look forward to  
17 hearing how this pilot goes. It's an important  
18 initiative. Are there questions for Sharon? All  
19 right. In that case, I think I'll come to  
20 everyone's favorite part of the morning. We're  
21 going to take a brief break. I'm going to say 10  
22 minutes so we can try to keep on schedule. We are

1 close to it. And I already know it's hard to get  
2 you guys back in 10 minutes anyway, but if you can  
3 make every effort, we'll resume in 10 minutes.  
4 Thank you.

5 (Recess)

6 CHAIRMAN TEPPER: Thank you. Folks, if  
7 I could ask everyone to please some take their  
8 seats. All right. Thank you and welcome back,  
9 everyone. I think it's always a good sign when  
10 people come back after the break. I hope that  
11 means that you're finding the information as  
12 useful as we are this morning.

13 I'd like to continue. I'm glad to be  
14 joined today by Chief Judge Gerry Rogers from the  
15 TTAB. There has been a good bit going on, lots of  
16 changes, some of which you've seen, some of which  
17 you'll hear about this morning. So, Gerry, thank  
18 you for your time today. We look forward to  
19 hearing about new developments.

20 MR. ROGERS: Thank you, Maury. I'm glad  
21 to be here. Pardon the voice today, it's a little  
22 off. I'm not rehearsing for a new deep throated

1       role, I just have some kind of a cold. I'd like  
2       to move through the performance slides first, even  
3       though I know the agenda said we'll talk about  
4       hiring and vacancy, because I think the  
5       performance measures will kind of lead into that.  
6       And it does also show us a little bit about what  
7       is coming our way from Trademarks given the  
8       increases that Commissioner Cohn has talked about  
9       over the last two years. And you can see on this  
10      slide that the work that's coming in the front  
11      door, this first slide, shows that appeals were  
12      just kind of steady for the year, down a little  
13      bit from FY '10, about the same as in FY '11. But  
14      extensions of time to oppose and oppositions and  
15      cancellations were all up this year, the highest  
16      levels in three years.

17                So some of those applications that are  
18      being published are getting opposed at a higher  
19      rate. Some of those registrations that are being  
20      cited in ex parte cases as grounds for refusal are  
21      the subject of petitions to cancel. And so we're  
22      not quite at the really high levels that we saw in

1 '06 and '07 and '08 for opposition where we were  
2 above 6,000 a year. But these are clearly signs  
3 that filing levels are picking up for us at the  
4 Board based on the work that's coming through  
5 Trademarks.

6 On the next slide, I want to also point  
7 out that maturing to ready for decision, these are  
8 the cases that the judges work on, and this is  
9 both appeals and oppositions, cancellations, cases  
10 of all types. So clearly, again, we're up at a  
11 three year high in the last three fiscal years.  
12 Not like it was in '08 or '09, but still a lot of  
13 cases that are maturing to the point where judges  
14 have to do final decisions on them. And one thing  
15 that this figure doesn't - I can't really tell  
16 from this figure is whether it is appeals or  
17 whether it's more trial cases, because this is  
18 something that previously the Board had not  
19 tracked the number of appeals versus oppositions,  
20 cancellations in its monthly reporting that were  
21 maturing to ready for decision.

22 We started doing that in February. So I

1 hope by the next meeting I'll have a year's worth  
2 of data and I'll be able to figure out whether the  
3 case is maturing to ready for decision that the  
4 judges have to write finals on or coming from  
5 appeals that are being prosecuted through or  
6 whether there are more trial cases, oppositions  
7 and cancellations that are being prosecuted  
8 through. So that's something I'll be monitoring  
9 and we can talk about again next time.

10           And then, of course, cases decided,  
11 highest in three years. I'm very proud of what  
12 the judges were able to pull out this year.  
13 Still, it's a small business unit, you know.  
14 Eighteen judges is not a lot for the work that  
15 they're asked to do on cases. And with the number  
16 of cases maturing to ready for decision increasing  
17 as it did this year, so the work they were  
18 expected to do was increasing and yet they  
19 responded as a team and increased about 18  
20 percent, increased their production this year. So  
21 I'm very proud of the work that they did.

22           But I've also discussed with them, and I

1 think everybody understands that we're bringing on  
2 new judges who will talk about in a minute, and  
3 the filing levels are probably going to continue  
4 to rise, and so we're going to have to target  
5 another 20 percent increase, you know, again for  
6 this year just to make sure that we keep pace with  
7 the expected workload increases, and I'm confident  
8 that we'll be able to do that.

9           The other thing that is not shown on  
10 this slide, but you will see in dashboards that we  
11 will be posting up on our web site soon, and I'll  
12 talk a little bit more about that in a minute, is  
13 the make-up of these cases that are awaiting  
14 decision for the judges.

15           Pendency at the end of the third quarter  
16 was a couple of weeks higher than it is now, so it  
17 has tipped down. The reason we've been able to do  
18 that is, the composition of the cases waiting to  
19 be decided has shifted from over 70 percent of  
20 those cases being more than 20 weeks old. And  
21 these are cases not yet decided, but waiting to be  
22 decided. But at the end of the third quarter,

1 more than 70 percent of those cases were over 20  
2 weeks old already. At the end of the fourth  
3 quarter, less than 40 percent of the cases were 20  
4 weeks old or older. And so what we've done is,  
5 we've been able to work off a significant part of  
6 the backlog.

7           Of course, as you work off a backlog of  
8 older cases, bringing down pendency is going to  
9 take a little bit of time because those older  
10 cases are older and so they're going to impact the  
11 average as you work them off. But it's a very  
12 positive thing that the percentage of all pending  
13 cases waiting to be decided by the judges has come  
14 down the average age of those cases, has come down  
15 significantly.

16           And, of course, 256 cases waiting to be  
17 decided is an inventory that's still, you know,  
18 higher than we want it to be, but it can come down  
19 from the third quarter where we were over 300, at  
20 307, so, again, progress in the fourth quarter.

21           In terms of end to end processing, FY  
22 '12 processing of appeals looks like it was

1 something of an aberration. As the bottom of this  
2 slide shows you, while the number was very high  
3 compared to FY '10 and FY '11, there were quite a  
4 few cases, as you can see, in each quarter and  
5 then comments on the bottom, quarter two, quarter  
6 three, quarter four cases that just had very  
7 unusual prosecution history entries and  
8 contributed to that overall average being higher  
9 than we would otherwise expect it to be.

10 So hopefully FY '12, in terms of the end  
11 to end processing, is a bit of an aberration. And  
12 again, as the judges are working off younger and  
13 younger cases, then the end to end processing  
14 comes down just as the pendency to final decision  
15 comes down.

16 In terms of trial cases, just by a few  
17 tenths, but nonetheless, it beats the last two  
18 fiscal years end to end processing, so we'll take  
19 any victory any way you can get it. Especially in  
20 this playoff season, people are scratching out  
21 wins by one run sometimes, and so we'll take one  
22 that we can get by a couple of tenths, so that's a

1 good thing.

2 I query whether some of it might have to  
3 do with more parties being interested in ACR, and  
4 we'll get to that on the next slide. But, of  
5 course, if ACR cases taken on average less time  
6 than regular trial cases, so to speak, they are  
7 going to bring down the overall average for all  
8 trial cases because they still get - while we  
9 track them separately, they still get figured into  
10 the average for all trial cases. And so that may  
11 be a leading indicator that, over time, more ACR  
12 cases will mean better end to end processing  
13 figures.

14 And on the next slide, the ACR cases, we  
15 started off really strong this year. And I was  
16 hoping that we might double the number of cases  
17 that were decided by some form of ACR. We only  
18 increased it by a third, but still that's good.

19 And, of course, we have the roundtable  
20 coming up at the end of this month where we'll be  
21 discussing ACR. We've had a webinar on ACR. And  
22 so we're going to try and figure out the lessons

1 learned from ACR and figure out what we can do to  
2 continue to increase the number of parties who are  
3 interested in pursuing some form of ACR.

4           And on motion practice, the significant  
5 thing here I think is, of course, this is the  
6 third year in a row that the attorneys under their  
7 new performance plan have come in under goal on  
8 deciding contested motions, so that's something  
9 we've very happy with. And also the nearly 30  
10 percent of contested motions that were decided  
11 following some form of phone conferencing with the  
12 parties is higher than it's ever been. So we're  
13 really reaching out, the attorneys are really  
14 reaching out to the parties and trying to help  
15 them resolve the contested motions as  
16 expeditiously as they can through phone  
17 conferencing.

18           The other thing we need to note on this  
19 chart is that each of the last two years we ended  
20 up with only about 150 contested motions waiting  
21 to be decided. Throughout this year, it was kind  
22 of stubbornly high a little bit and so we're still

1 at 199, but that's, of course, one reason why  
2 we've hired new attorneys. We want to make sure  
3 that that backlog that's stayed a little higher  
4 than we would like during the past year doesn't  
5 adversely impact pendency in the future. So we'll  
6 be attacking that backlog aggressively when the  
7 new hires come on board. Any questions about the  
8 performance measures?

9 MS. PARK: Let me talk for a minute,  
10 Gerry, so you can take a sip. And my sympathy  
11 because I just got over having a similar problem  
12 that went on and on. A couple of things I wanted  
13 to point out, which is one thing I was very  
14 pleased that 534 cases were decided, which was  
15 above what we had hoped for even, and that's a  
16 very good sign.

17 I also wanted to comment you for the  
18 number of presidential decisions that were issued  
19 in the last fiscal year. And maybe you could just  
20 say a word or two about them in a second, because  
21 I do think, again, that's something that the  
22 Trademark community has asked for, and I think

1       that you've heard us, and we did see more than we  
2       had anticipated.

3               And my last question, and I know you're  
4       going to talk about dashboards in a minute, but I  
5       do think when we look at some of the statistics  
6       that you've just gone over and we see that some of  
7       them seem very skewed because one or two or six  
8       cases or however many had some extraordinary  
9       circumstances like a nine year suspension, which  
10      is a long suspension, I do think it would be  
11      helpful when you start doing your pie graphs or  
12      whatever you're going to do, pie charts or graphs,  
13      to do two sets, one with everything and one where  
14      you take out those outliers, because I do think  
15      for purposes of counseling our internal clients,  
16      if you work at a corporation or if you're at a law  
17      firm, your clients, it is useful to be able to  
18      show so that the parties have an expectation of  
19      what reasonable timeframes are.

20             And when there is data in there that  
21      really skews it, you can explain it in a note, but  
22      it would be nice to also have a visual where

1 people could see what it would look like in a more  
2 normal circumstance. So hopefully I've talked  
3 long enough for you to regain some of your voice.

4 MR. ROGERS: No, that's very important  
5 points, Kathryn. And, yes, I'm also very proud of  
6 the attorneys and the judges for increasing the  
7 number of precedents this year. It was pretty  
8 much equal in terms of ex-precedence in ex parte  
9 cases and precedence in inter parties cases. And  
10 in the latter group, of course, some of those are  
11 precedents that deal with procedural matters and  
12 motion practice matters, so the attorneys have  
13 contributed significantly to that.

14 But we were up to identifying nearly 50  
15 cases as having decisions we created which we  
16 thought were precedent worthy. Forty-three of  
17 them actually issued by the end of the fiscal  
18 year. And some still remain under consideration  
19 and are going through the presidential review  
20 policy. So that's up from the 38 that we issued  
21 last year, and we're very pleased with that.

22 And I agree with you on the dashboards.

1 I think any visual tools that will take out the  
2 outliers, just as Trademarks reports, the, you  
3 know, overall processing with and without  
4 suspended cases I think, especially for, you know,  
5 appeals, it might be very useful to show cases on  
6 end to end processing of appeals that just go  
7 through the normal course of an appeal and weed  
8 out those that involve significant requests for -  
9 well, not requests for reconsideration because  
10 those come up in many cases, but sometimes we get  
11 cases involving many remands or suspensions, and  
12 if we can weed those out, I think it'll give  
13 people a truer sense of how appeals are going to  
14 be processed in a normal case, in a typical case.

15 CHAIRMAN TEPPER: Thank you, Gerry.  
16 Before we move on, I think, Dee Ann, did you have  
17 a question? I'll have one after you.

18 MS. WILSON: I did. And please forgive  
19 me, this is something I should have already known.  
20 But you mentioned that the attorneys came under  
21 goal for resolving contested motions. Could you  
22 tell me what some of the goals are on these in

1 terms of numbers or in time periods?

2 MR. ROGERS: Yes. Well, the goal for  
3 resolving contested motions has been to resolve  
4 them on average in 10 weeks or less. And that's  
5 been the call for the last three years. And  
6 again, we've come in under that goal. And that  
7 average is the average for the decisions that are  
8 issued. So it doesn't reflect the overall age of  
9 some of the motions that may still be pending, but  
10 that's something that we're going to be showing  
11 both for the inventory of work that the judges  
12 handle and the inventory of work that the  
13 attorneys are responsible for in the dashboards.

14 We will be showing through pie charts or  
15 graphs, you know, the kind of breakdown of the age  
16 of pending matters. And so when I said earlier  
17 that the cases waiting for judges to decide that  
18 were 20 weeks or older had decreased from 72  
19 percent to 38, that's very visible in a pie chart  
20 in terms of the overall percentage of cases that  
21 are waiting to be decided.

22 And so we'll figure out how to do this

1 for both motions and final decisions and show the  
2 overall ages of things that are pending so people  
3 will know not only the average age of the motions  
4 that were decided by issued decisions or the  
5 overall age, average age of the final decisions  
6 that issued, but they'll also have a sense of  
7 what's waiting to be decided and how old it's been  
8 so that can help you counsel your clients, because  
9 you'll know who's already in line or what  
10 percentage of cases are already in line.

11 CHAIRMAN TEPPER: Well, Gerry, I'll  
12 piggyback on the last question and first of all,  
13 congratulations for exceeding your goal, that's  
14 really good. I was unaware. I think for us  
15 generally, it would be helpful in looking at the  
16 presentation and the data you provide us where  
17 there are targets or goals to include those so  
18 that we can see and probably ask you better and  
19 more focused questions on, you know, where are we  
20 ahead of plan, where are we behind plan, where do  
21 we need to focus our attention.

22 So if there is a way, this is all good

1 information and gives us sort of a big picture  
2 sense of what you're up to. But to give us kind  
3 of where you've set targets and goals, something  
4 to compare those two would help us a lot.

5 My question is going to be similar.  
6 Your current I guess inventory, you're at 256  
7 cases awaiting decision, do you have or is there  
8 sort of a target level that you would like to be  
9 at? We know, for example, on Trademarks, you  
10 know, pendency and we've talked about that 2.5 to  
11 3.5 months for first action.

12 MR. ROGERS: Right.

13 CHAIRMAN TEPPER: Is there a point at  
14 which, you know, we don't want to go too far below  
15 a certain inventory or too far above or do you  
16 have a sense of how you feel about the range?

17 MR. ROGERS: Yeah. I mean the goal for  
18 the judges is to get final decisions out within a  
19 range of 12 to 14 weeks from the time the cases  
20 are ready for a decision. And so obviously the  
21 pendency is above goal but coming down.

22 I don't really have a sense of what a

1 good working inventory is with the number of  
2 judges increasing. We'll have to try and figure  
3 that out moving forward. I know, for example,  
4 anecdotally that if a judge asks me for work, I  
5 will assign them two or three cases at a time to  
6 work on and it could be a couple of ex parte  
7 appeals and one trial case.

8           And so if I had every judge ask me for  
9 work at the same time, you know, I would need a  
10 good 80 or 90 cases to give everybody work. So  
11 I'm thinking we probably need at least a working  
12 inventory of 80 to 100 cases. But I'm not sure  
13 how much more above that we want to be.

14           CHAIRMAN TEPPER: No, that's helpful. I  
15 certainly appreciate your bearing with us  
16 through respiratory distress. And by the way, you  
17 are free to continue with baseball analogies.  
18 I'll point out that I grew up in Cincinnati, Ohio  
19 and I'm trying to avoid them as desperately as I  
20 can today. But my hats are off to the Nationals  
21 for their performance last night. I was glad to  
22 hear, and just to kind of get a more comfy

1 picture, that sort of the pendency is obviously an  
2 issue. We've talked about and we've been looking  
3 at with you that, you know, you're focusing on the  
4 older cases.

5 And you mentioned that, you know, as  
6 those go away, that will, in turn, bring pendency  
7 down, but right now we sort of have the numbers,  
8 you know, sort of increasing or sort of remaining  
9 there as those older cases work their way out of  
10 the system.

11 Do you have a sense as to timeframe for  
12 when we would start to see the impact of those  
13 cases being removed and when we would see the  
14 pendency numbers starting to reverse themselves?  
15 Are we looking at six months from now, are we  
16 looking at three months from now, or is it --

17 MR. ROGERS: Well, I'm hoping that  
18 decline from about 26 weeks to 24 from the third  
19 to the fourth quarter was their tipping point and  
20 that it will continue to go down. So especially  
21 with bringing new judges on board, I'm hopeful  
22 that we'll certainly be down under 20 weeks and

1 get within hailing range of our 12 to 14 week goal  
2 later in the year. And if we can increase our  
3 production by another 20 percent this year, which  
4 I'm confident that we can, it's just going to be  
5 kind of a function of monitoring the number of  
6 cases maturing to decision. And again, on an  
7 earlier slide we saw that that went up  
8 significantly this year. And we'll have to wait  
9 and see whether it's going to go up again  
10 significantly this year or whether - and so what  
11 we'll be working with. But, you know, my goal is  
12 to increase the production and bring down the  
13 pendency during the coming year.

14 CHAIRMAN TEPPER: Thank you. Are there  
15 other questions before we continue? I know we've  
16 sort of hinted at and touched on things like  
17 dashboards and new hires, so I want to let Gerry  
18 proceed. Any other questions at this point?  
19 Okay. Well, take a big swallow and --

20 MR. ROGERS: Pardon me for using a cough  
21 drop, but hopefully that will help. Well, we have  
22 hired three new attorneys and we've hired four new

1 judges. One of the new judges is a current  
2 attorney who has been promoted. One of the new  
3 attorneys will come on board in another 10 days or  
4 so. And the rest are all going to be coming on  
5 board in the month of November.

6 And so typically in the first quarter,  
7 we see production sometimes waning as people take  
8 vacations and there are holidays. But fortunately  
9 this year we're going to have a lot of new people  
10 who won't have a lot of leave saved up and they'll  
11 have to work through the first year and that will  
12 help our production. And we will hopefully have a  
13 good, robust first quarter and that will be a good  
14 way to start the year.

15 But we were able to hire people with  
16 really excellent qualifications, partners from law  
17 firms and people with 10 or more, in some cases 30  
18 years experience handling IP and Trademark  
19 matters.

20 A good mix of people who have tremendous  
21 writing skills, who have experience with business  
22 and know what businesses need in terms of settling

1 cases. And so hopefully the diversity of the  
2 group that we're bringing on is going to help us  
3 in resolving cases.

4 MS. PARK: I'm going to give Gerry  
5 another break. I just want to say we are very  
6 pleased on TPAC with the recent hires. And all  
7 four of the new judges have really sterling  
8 credentials. So I think I share your optimism  
9 that they're going to really help with production  
10 because they are, you know, many of them were  
11 people that I know of and respect in the Trademark  
12 bar, so it was really great to see their addition  
13 to the Board.

14 MR. ROGERS: Thank you. In addition to  
15 hiring, something on the agenda that you wanted to  
16 talk about was the other initiatives for working  
17 on the backlogs. And we have Trademarks to thank  
18 for sending examining attorneys are way. We're in  
19 the beginning states of a work project where right  
20 now six examining attorneys are working with six  
21 of our judges on larger record inter parties  
22 cases.

1                   And the prevalence of larger record  
2           inter parties cases is something that harkens back  
3           to your question, Maury, about what's good  
4           inventory. And so part of that is figuring out  
5           what the average record size is going to be and  
6           how long it's going to take people to get through  
7           those cases.

8                   And so we're seeing very positive  
9           returns from this work project with the examining  
10          attorneys. We've gotten a number of decisions out  
11          in cases where the examining attorneys worked with  
12          the judge and helped go through the record and  
13          categorize all the evidence and help the judge get  
14          those final decisions out.

15                   So it's an increase in productivity just  
16          based on the anecdotal evidence that we have from  
17          early on. But later, at the end of the first  
18          quarter, we'll be looking more comprehensively at  
19          the work that these first six have done, and  
20          interviewing the judges, and interviewing the  
21          examining attorneys and figuring out what we can  
22          do to make the project a success continuing

1 forward and get a sense of how it has helped not  
2 only the examining attorneys who have come over  
3 and had a good experience with us, but the judges  
4 and their productivity. So hopefully by our next  
5 meeting we'll have a good sense of trying to  
6 quantify some of the benefits of that program.

7 In fact, I have to point out that one of  
8 the examining attorneys has helped us in a way  
9 that we never anticipated, and that is, some of  
10 you may notice that over the years the Board has  
11 issued decisions and sometimes the citations are  
12 in italics and sometimes they're straight up and  
13 sometimes they're underlined and everyone has kind  
14 of worked in the way that they want it to work.

15 But we have an examining attorney who's  
16 working with Cheryl Butler, our new senior  
17 attorney, manual editor, and we're kind of moving  
18 in a direction of standardizing our templates and  
19 the look of our decisions and trying to save time  
20 so that people don't have to recreate the formats  
21 for their decisions. And one of the examining  
22 attorneys is really good with this kind of stuff

1 and has been loading increased and very useful  
2 templates on the computers of all of the judges.  
3 We're working through them. She started with the  
4 group of judges who were working with Cheryl  
5 Butler on this template project. But I think it's  
6 become such an attractive approach to getting our  
7 decisions out that many judges say, yeah, I want  
8 those templates, too.

9 CHAIRMAN TEPPER: I think we may have  
10 had a question over here for you, Gerry.

11 MS. HAMPTON: Good morning, Judge  
12 Rogers. My first question, first comment is, I  
13 think it's great that there's been new hires on  
14 the Board. But I also realize that there are some  
15 judges that are nearing retirement. And so I  
16 wonder what the plan is for replacing those judges  
17 that are going to be retiring.

18 And since you mentioned templates, I now  
19 have sort of a part two question. In terms of  
20 standardizing and using templates, do you think  
21 from a training standpoint, that will bring the  
22 new hires up to speed quicker and get them moving

1       quicker to handle the backlog?

2                   MR. ROGERS: I'll take the second one  
3 first. I'm not sure how much the templates will  
4 actually reduce training time. But pairing the  
5 templates with our more senior attorneys, in fact,  
6 a couple of those who are among those eligible to  
7 retire in a few years, I'm trying to get the  
8 benefit of their experience by having them do the  
9 training of some of these new judges who are  
10 coming on board. And so I think we'll get the  
11 benefit of a lot of good experience and the  
12 training.

13                   I expect to go very quickly. There are  
14 really experienced people who are coming on board  
15 and we're pairing them, matching them up with some  
16 of our really high producers and/or experienced  
17 judges. So I think the training will go very  
18 well.

19                   In terms of hiring levels in the future  
20 and judges that retire, while we have some who are  
21 eligible and some who will become eligible in the  
22 coming years, I've got no firm indications from

1       anybody that they're planning to retire in the  
2       next year or so. And so I think we will have the  
3       benefit of getting these new people on board and  
4       getting them trained, working off some of the  
5       backlog, and then being able to reassess when we  
6       do have people retire a couple of years from now.  
7       And hopefully we'll know then what the budget is  
8       like and be able to replace people if we need to.

9               MS. HAMPTON: I just have one other. Do  
10       you think it's something - just looking out at the  
11       landscape moving forward, even though, you know,  
12       some of the judges may not have specifically  
13       stated that they're going to be retiring, but if  
14       you kind of look at the landscape moving forward,  
15       and if you think about starting to plan, you know,  
16       the what if, what if in, you know, two years or  
17       three years, sort of starting early so that  
18       there's something in place, are they still to  
19       retire?

20              MR. ROGERS: Yeah. What your question  
21       really gets at is something that we haven't had a  
22       good tool for, but that we need to develop. And

1 I'm hoping to work with our new senior  
2 administrator, Debbie Decker, on this. And we  
3 haven't really had a good tool for looking at the  
4 number of examining attorneys, the rate of  
5 Trademark filings, the number of cases coming in  
6 our front door, et cetera, and predicting how long  
7 and how many motions are going to come out of  
8 those cases and how many decisions are going to  
9 have to be written by the judges.

10 And so we're going to try and come up  
11 with some better predictive tools that will  
12 hopefully help us forecast staffing levels in the  
13 future.

14 MS. HAMPTON: Thank you.

15 MS. PARK: Judge Rogers, thank you. And  
16 I'm going to give you another little break from  
17 talking. I wanted to say, first of all, that I  
18 was really pleased to hear even anecdotally that  
19 the detailed program with the Trademark examining  
20 attorneys is working out so well. It certainly  
21 doesn't surprise me that having someone to help  
22 you digest a record and draft opinions will

1       increase productivity.

2                   And I'm wondering perhaps when you think  
3       you'd be able to talk in more detail about what  
4       the plans would be for the future to expand that  
5       program more broadly so that - I understand  
  
6       there's a detailee assigned to a specific judge,  
7       but so that more judges could take advantage of  
8       this additional help.

9                   MR. ROGERS: Yeah. I really don't have  
10       a particular plan for expanding it. I really want  
11       to hear from the judges themselves and from the  
12       examining attorneys about how well it's been  
13       working and figure out what the best approach for  
14       the future would be, whether it would be to just  
15       continue a kind of rotation with examining  
16       attorneys or whether it might be better to move  
17       into some more permanent kind of position that  
18       would involve doing this kind of work and  
19       assisting the judges, more like a clerk position  
20       or something like that. So I think we're open to  
21       all of those possibilities and we'll just have to  
22       wait and see what the experiences and what we can

1 learn from. The first three judges have been  
2 doing this only for a couple of months and the  
3 second three just started a couple of weeks ago.

4 CHAIRMAN TEPPER: I found a new button  
5 on my microphone. I might use that. Gerry, thank  
6 you. You know, we're running a couple minutes  
7 over and I do want to let you touch on our last  
8 few topics. But certainly we're encouraged to  
9 hear early success from the program. My hope will  
10 be, if it's working well, that it will multiply  
11 quickly and you guys can use that help effectively  
12 to address the issues you see. Let me let you  
13 touch on the dashboard. Anything else you want to  
14 make sure we know about? Why don't we say just  
15 the next few minutes?

16 MR. ROGERS: On the dashboard, I think  
17 you'll see those by the end of November. We will  
18 look to get them up quickly. We've had some  
19 useful discussions. We were working on them even  
20 this week. And we will be focusing at the  
21 beginning on getting out three or four graphs each  
22 for the work that the judges do and the work that

1 the attorneys do. And we'll get them up and then  
2 we'll start taking public comment on them and  
3 potentially expand from there.

4           And then we also had on the agenda,  
5 talking about outreach. I do want to point out  
6 that the Board has been involved in a lot of  
7 outreach recently and a lot in the near future.  
8 We were at a UNH law school program in September.  
9 We had a hearing there. We made presentations  
10 there, a TTAB specific program. We've  
11 participated in an ABA webinar on ACR.

12           We have another webinar coming up next  
13 week with the ABA that's going to be on trial  
14 practice tips more generally and not ACR focused.  
15 We are going to be at the AIPLA annual meeting and  
16 we'll be discussing best practices and TTAB rules  
17 as part of a program there.

18           Of course, we're participating with  
19 Trademarks and getting various panels together for  
20 the IPO's PTO day program in December. And we  
21 have the roundtable on ACR on October 30th. And  
22 we're just waiting to get the last couple of

1 nominees from some of the stakeholder  
2 organizations so that we can finalize the agenda  
3 and discuss it with the participants.

4 And the Office of Enrollment and  
5 Discipline is doing a day long program for law  
6 students who are participating in the PTO's law  
7 school clinical programs. And we will present a  
8 hearing. We will hear arguments in the cases as  
9 part of that program and make some presentations  
10 there, too. And the last point I guess I should  
11 make before I have nothing left of my voice is, we  
12 will be moving the TBMP. Of course, we got it out  
13 last year and we met our goal of getting a  
14 revision out within a year. And our next big goal  
15 is to get all of that content put into the RDMS  
16 system so that, like Trademarks, we'll be able to  
17 make future additions available through the RDMS  
18 system. So that's a goal that I'll be working  
19 with Cheryl Butler on.

20 CHAIRMAN TEPPER: Thank you, Gerry, very  
21 much. We're a little bit over so I'm going to  
22 hold at that point so we can move forward. We

1 appreciate the update. I especially appreciate  
2 your coming in when you're not feeling well. And  
3 I do hope that your voice is saved. I promise  
4 Gerry was not at the baseball game last night, so  
5 this is - I wish it were for that reason. But  
6 thank you for your time today.

7 MR. ROGERS: You're welcome.

8 CHAIRMAN TEPPER: All right. We're just  
9 a couple of minutes behind. So, John, I will  
10 either apologize for taking your time or let you  
11 know if you're relieved that you're off the hook  
12 for those five minutes. But we're going to hear  
13 now about what's new in IT, some developments from  
14 the Office of Chief Information Officer. I see  
15 John Owens is coming up today. And I'll let you  
16 start off and introduce our speakers.

17 MR. OWENS: Good morning and thank you.  
18 All right. Well, Mr. Dolas, the portfolio manager  
19 for Trademarks, again, direct report to me dotted  
20 line to both Debbie Cohn and Mr. Kappos, is not  
21 here today. But our program manager, Kevin Hamer,  
22 is here, and he will be talking about Trademark's

1 Next Generation.

2           So a couple of quick things going on.  
3 First off, let's talk about a couple of the  
4 production issues, namely X-Search, which we had  
5 just started to discuss last time. The laptops  
6 were deployed with a copy of X-Search that made  
7 some improvements to the performance. We are fine  
8 tuning that right now with a couple of variants of  
9 those performance tweaks that are in the hands of  
10 Trademarks today.

11           Those performance measures will be taken  
12 in the field from live examiners. And based on  
13 that, we will choose one or other of the  
14 configurations that optimize performance for cost  
15 and then upgrade everyone to that base platform so  
16 that we can maintain a consistent uniform  
17 environment. A couple of things, we've officially  
18 retired, which the long standing goal here is to  
19 retire Legacy systems and replace them with new  
20 ones. We have officially retired TDR and TARR and  
21 we have replaced it with TSDR, which I have heard  
22 from the Committee lots of folks like and I hope

1 we can continue to expand that. In fact, I  
2 believe that it's on the list for next year.

3 We have successfully deployed a small  
4 modification to the OG that allows you to click,  
5 and instead of going through page after page after  
6 page and hoping some day your mark will not be at  
7 the end of the document instead of the beginning,  
8 we bring you right to your mark.

9 Successfully deployed Madrid, style  
10 sheet upgrades, which I know many of you are  
11 using. So those are some of the good things. And  
12 we are about to deploy some fixes. The third  
13 party project, we deployed Snag-It, which allows  
14 an examiner to grab web pages used as evidence and  
15 deliver them as evidence to you all. Had a bug,  
16 and we are upgrading I think from version 8 to  
17 version 11 of that product. Again, that's a third  
18 party product, not one that we have here, but it's  
19 critical to the success of the examiner. And  
20 we're redirecting the links for BOS and the TMEP  
21 that allow you to all use the new RDMS system to  
22 view the TMEP, the same RDMS system that Judge

1 Rogers spoke about a moment ago. And we are  
2 working with the agencies, also the one that  
3 houses the MPEP, and it is a fully scalable,  
4 redundant system that brings a little bit of a  
5 more modern look and searching capability to the  
6 TMEP.

7 And finally, FPNG, the new financial  
8 processing system. We have decoupled our data  
9 base links to RAM and we are well on track for  
10 linking to that new financial system in February.  
11 That's a big deal because it will allow you to  
12 have a single log-in and a single shopping basket  
13 for all of your needs for Trademarks which will  
14 simplify things for you all greatly.

15 So that's a little bit of the high  
16 level. Does anyone have any questions about the  
17 current state of the systems before I hand it over  
18 to Mr. Hamer?

19 CHAIRMAN TEPPER: Are there questions  
20 for John? Sure.

21 MS. BLACK: Hi, John. I had a question  
22 about the laptop. You said all the laptops are

1       deployed. At our last meeting we had talked about  
2       the cash approach of the fix and you said that  
3       you'll be evaluating the effectiveness of that. I  
4       was wondering if you could give us a timeframe.  
5       Is it going to take a month to gather that  
6       information or less?

7                 MR. OWENS: Somewhere between 30 and 45  
8       days is my understanding after yesterday's  
9       meeting.

10                MS. BLACK: Okay. And so after that,  
11       you'll make a decision on whether you're going to  
12       use that system or go with the other approach and  
13       everything will be formalized or unified by all  
14       examining attorneys?

15                MR. OWENS: That's when the CIO and  
16       Trademarks will make a joint decision on what we  
17       want to do, we as in the both of us.

18                MS. BLACK: Okay.

19                MR. OWENS: I'm not making this in the  
20       blinders. I support the business. I don't make  
21       global decisions on my own unless it has to do  
22       with something that I am responsible for like

1 security. Some people don't, you know, some of  
2 those things I have to force on everybody.

3 But in this case, it will be a joint  
4 decision. I'm sure Debbie and I will personally  
5 speak about it. We will come to a formal  
6 decision. And from that point of evaluation, when  
7 both of us are satisfied, then we will migrate  
8 everyone to a single platform.

9 MS. BLACK: Okay.

10 MR. OWENS: I'm not sure which platform  
11 until that analysis is done. But the analysis  
12 should take somewhere between the 30 to 45 day  
13 range or sooner if we can get it done sooner and  
14 everyone agrees, it's obvious, then we can move  
15 on. So we always look at doing it most  
16 efficiently as possible. But after that, then we  
17 will have to plan a roll-out of an upgrade to  
18 either - to bring everyone on to the same baseline  
19 basically.

20 MS. BLACK: Okay. Well, thank you. And  
21 I did want to say that we did notice the changes  
22 and the improvements --

1 MR. OWENS: Oh, good.

2 MS. BLACK: -- to TSDR and the TMOG and  
3 do appreciate those.

4 MR. OWENS: Oh, yes. We've been working  
5 hard to fix the back end so we can start  
6 delivering more on the front end for you all. So  
7 thank you very much for noticing.

8 MS. BLACK: Thank you.

9 CHAIRMAN TEPPER: John, I just want to  
10 make sure I'm kind of up-to-date. I know that the  
11 new equipment, the new laptops are in the hands of  
12 all the examiners. At our last meeting we  
13 understood there were issues with, you know,  
14 particularly two programs that examining  
15 attorney's use day-to-day when they're sort of  
16 accessed out over the internet remotely for those  
17 many examiners who work at home. And the cash  
18 issue that you all just mentioned I believe was  
19 part of trying to facilitate examining attorneys  
20 being able to use the systems, that they use X-  
21 Search and FAST.

22 Where do we stand? I know you're

1 looking to resolve, you know, that particular fix.  
2 Right now, what are we looking at in terms of the  
3 examining attorneys and their day-to-day work?  
4 They're using the equipment or they're using an  
5 old system or how are we looking at that?

6 MR. OWENS: So there were two  
7 deployments of laptops, one in approximately the,  
8 and I don't want to get this wrong, someone from  
9 over there nod at me. Mary. The May timeframe?  
10 Okay. And the other one from the August  
11 timeframe. She didn't nod. Was I wrong? Oh, she  
12 nodded, okay, good.

13 Lots of deployments I deal with. I'm  
14 sorry, I don't memorize them all. The May  
15 deployment did not have a larger hard drive and  
16 the cash available. The August deployment did.  
  
17 Since the August deployment, we have worked with  
18 Trademarks to make another couple of tweaks. We  
19 are going to weigh how fast those are. Now, the  
20 average performance is rated in a controlled  
21 setting by a very small number of people in  
22 controlled environments is about one-tenth to

1 five-tenths or a half of a second variance. But  
2 that one-tenth or one-half of a second,  
3 particularly the half of a second per page flip  
4 adds up, and it does impact our examining core.

5           So the goal is to try to get it down to  
6 two page flips per second on average. And we have  
7 a couple of variables we're toying with there.  
8 And now we are in the test phase where we're going  
9 to - since it's after quiet time, because we don't  
10 touch anything at the end of the fiscal year,  
11 right, because people are trying to get their  
12 production numbers in, we can't mess with  
13 anything.

14           So now that we are past that, we are  
15 looking at doing the test that I just described,  
16 figuring out what options are best, weighting the  
17 performance against the cost, against any changes,  
18 against who it would impact, to get the best  
19 overall experience into the hands of the examiner.

20           And once that is made, we will adjust  
21 the laptops, which are fundamentally exactly the  
22 same except for the software load and the hard

1 drive size, and hard drives are cheap, okay. So  
2 we're not talking about a huge amount of money.  
3 And we will adjust everyone to be on the same.

4 The other major issue that's really  
5 plaguing the examiner now, and we spoke to Howard  
6 the other day, is really that Snag-It issue I  
7 talked about. Snag-It, the world of IT on the  
8 world wide web continuously changes. The Snag-It  
9 product suddenly started to break as new web  
10 sites were put out or updated web sites with new  
11 HTML standards. And we need to upgrade that  
12 product, which means integration with our FAST  
13 product.

14 We are addressing that. It has been  
15 moved. Debbie and I spoke. It's been moved to  
16 the top of our priority list instead of kind of in  
17 the middle. And we are looking to get that tested  
18 and deployed as quickly as humanly possible.

19 CHAIRMAN TEPPER: Thank you. For those  
20 of us out there, that means we will have evidence  
21 attached to the office actions we receive. So  
22 that is obviously a pretty important thing both

1 internally and externally. And this may provide  
2 your transition to Kevin. But, you know, we've  
3 been aware for a while of sort of the need to try  
4 to keep these systems that examiners rely on  
5 working, while in the meantime, try to invest in  
6 moving toward the new Trademarks Next Generation  
7 environment that is going to ultimately replace  
8 these programs. And maybe this is less of a  
9 question then. I'd like to hear from the both of  
10 your sense of sort of where that balance lies.  
11 And we've seen obviously some enhancements. It's  
12 nice to start to see things changing on the  
13 outside. But how's the timeframe? What does the  
14 gap look like in terms of, you know, keeping these  
15 systems alive while we're building the new one?  
16 And I'll let you sort of provide us with that  
17 background.

18 MR. OWENS: So keeping the Legacy  
19 systems alive due to their age gets more and more  
20 difficult every year that goes by. I'm not going  
21 to say that it's the same as it used to be.  
22 Actually it gets harder every year.

1           We do have our steps that we are taking,  
2           the virtualization and trying to shore them up as  
3           much as possible and even enhance them, and we've  
4           seen some of those enhancements. Recently Debbie  
5           and I spoke to Mr. Kappos, and Debbie and I and  
6           the CFO came to the agreement that since we have  
7           focused on the infrastructure, and I know a lot of  
8           that is not very glamorous, you all don't see it,  
9           but it is critical to the future success of  
10          Trademark Next Gen, and we've been focusing on  
11          that area. But a recent agreement, which you'll  
12          hear about today, and I don't know if Debbie  
13          covered it earlier, we have agreed to an increase  
14          in spending on IT to accelerate some of those  
15          things both that you will see this year with a few  
16          enhancements to Legacy systems that will be what  
17          we call transportable on to the new Trademark Next  
18          Gen environment, as well as accelerating some of  
19          the Trademark Next Gen work.

20                 So as with that investment, now that the  
21                 IT modernization roadmap is done, now that our  
22                 focus is almost completely in my organization on

1 building the new applications, aka Trademark Next  
2 Gen, Patents end to end, FPNG, and the various  
3 supporting systems for the judges and so on, we  
4 have now taken all of our resource, instead of  
5 stabilizing our environment over the last few  
6 years, and focusing it on replacing the Legacy  
7 systems with much more modern, maintainable,  
8 available 24 by 7 systems.

9           And this gets back to something that I  
10 said years ago which a lot of people forget. We  
11 live in a world where our IT systems and reliance  
12 on them is 24 by 7 and we expect them to never go  
13 down. You know, when we think about the Google's  
14 and the Microsoft's and the Amazons and the Yahoo,  
15 their systems are available 24 by 7, and if they  
16 are not available, they make the news. USPTO  
17 systems were designed for 1, 9, 90 percent, which  
18 are days, weeks of down time. And it's hard to  
19 understand, but if there's 365 days in a year,  
20 just take, you know, 10 percent of that, 36 days  
21 of down time. And, of course, a lot of people  
22 don't realize that that's the system that we've

1 built, but it's what we have.

2           So even though over the last few years  
3 we've plugged as many of those holes as possible,  
4 the analysis on how stabile the environment is and  
5 because of how it was designed and built and the  
6 technology that was available at the time, the  
7 expectation of it being available 24 by 7 has  
8 never been met by its design. That is what, in  
9 large part, Trademark Next Gen is for. Great, now  
10 I'm losing my voice.

11           So that's important to keep in  
12 perspective and why on the surface we haven't seen  
13 a lot with Trademark Next Gen, but it's, you know,  
14 Debbie and I have spoken about this on a number of  
15 occasions, it is critical we concentrate on some  
16 of the less glamorous and the less seen  
17 infrastructure on the back end because no one  
18 builds the facade of a building before they build  
19 the foundation to the building.

20           And it's the type of work actually that  
21 I'm accustomed to because that's the type of work  
22 that I as an engineer did, was that back end core

1 infrastructure. But it also leaves our customer  
2 wanting. And if anyone has ever gone through the  
3 process of building the house, you know, the first  
4 time you see the big hole dug and the foundation  
5 you're put in, you're like, yeah, where's my  
6 walls, where's my rooms, where's my heating,  
7 where's my roof, you know, and it seems to take  
8 forever to get there.

9 But it is a crucial, important step.  
10 And trust me, no one ever wants to have a house  
11 with finely painted walls and wonderful floors and  
12 ceilings and fixtures only to have a crack in  
13 their basement and it to fill with water. That's  
14 bad.

15 So I will, because I've probably run  
16 over the amount of time I had, turn this over to  
17 Kevin, who will go over with you where we are with  
18 Trademark Next Gen and talk a little bit about  
19 those things that we are going to accelerate to  
20 give you more of a view of the future this coming  
21 year.

22 MR. HAMER: Thanks. Good morning. I am

1 not Raj Dolas, I'm Kevin Hamer, and I am the  
2 program manager for Trademark Next Generation and  
3 Trademark Legacy Systems. To continue on with  
4 what John said, just to level set what our  
5 objective is, it is to, over the next three years,  
6 do the majority of the work in creating a Next  
7 Generation system end to end using modern  
8 technologies on a modern platform that will result  
9 in retiring all of the existing Legacy systems in  
10 Trademarks. That's a big undertaking.

11 We've had some successes over the FY '12  
12 period and I'll walk you through a few of those.  
13 A lot of work to be done, but we've set ourselves  
14 up for success here. You're looking at the  
15 portfolio itself and the various programs that we  
16 have under the portfolio, Cloud computing  
17 infrastructure, separation of virtualization, data  
18 services, user interface, and web and business  
19 services.

20 Some of those are infrastructure and  
21 some of those are actually development of the  
22 applications and user interfaces, which will be

1 more important, more visible to you all.

2           We've set ourselves up for success in a  
3 couple of ways. One is, create some prototypes  
4 and pilots in each of our major program areas.  
5 And we have done that in accordance with a  
6 business architecture which is established by the  
7 Trademark organization to identify their needs,  
8 what the end state is that we're building these  
9 systems to meet. So their business architecture  
10 provides the foundation for how we are actually  
11 designing the systems. So we had some new  
12 additions to that business architecture that was  
13 developed last year, one of which is to really  
14 include the Trademark Trial and Appeal Board and  
15 integrate their activities and their needs into  
16 our overall business architecture.

17           So our objective in developing Trademark  
18 Next Generation is to integrate the Trademark  
19 Trial and Appeal Board with the Trademark Next  
20 Generation system so it's seamless and end to end.

21           We have an application development track  
22 which is separated into three different

1 components. The first is user interface. Over  
2 this last year, we had created a prototype using  
3 three different user interface vendors. And we  
4 went out to the Trademark users, identified the  
5 opportunities, what they wanted to see in a user  
6 interface. The three different vendors proposed a  
7 prototype.

8           It was voted upon by the Trademark  
9 organization and we selected a vendor to do our  
10 user interface. So that was accomplished in this  
11 last year. The vendor is now on board and  
12 developing under our current project the user  
13 interface for Trademarks Next Generation. We're  
14 in the first phase of that. The second element of  
15 our major development application effort is the  
16 Web and Business Services Program. We're in phase  
17 one of that effort, and that is going to be the  
18 core of the applications that we develop using web  
19 services and the business logic for the Next  
20 Generation effort. It's really our cornerstone,  
21 where we're going to spend the most money and do  
22 the most work.

1           We in FY '12 also created a prototype  
2           and a pilot which set us up for continuing  
3           success, and that was a case management tool that  
4           we initially didn't think we'd be able to find in  
5           a COSS project, a commercial off-the-shelf  
6           software product to do case management to meet our  
7           needs.

8           We did a lot of market research. We  
9           selected one case management product. And we did  
10          a prototype in FY '11 and then a pilot in FY '11  
11          which was very successful looking at their ability  
12          to meet our core needs.

13                 MR. OWENS: '12.

14                 MR. HAMER: '12, yeah. Thanks, in FY  
15          '12. And we just finished up that 90 day pilot at  
16          the end of FY '12. It was successful. And we've  
17          moving forward in FY '13, continuing to explore  
18          that off-the-shelf software case management  
19          product and work with that to develop our core web  
20          business services. We're also working on a  
21          project to develop a Trademark reporting and data  
22          mark for the Trademark systems to consolidate all

1 of our data into a data warehouse and then have  
2 the ability for the Trademark customers to use  
3 self-service to develop reports and do some  
4 business analytics with that tool.

5 Our third element is data services, our  
6 third large element of the Next Generation  
7 application development. Data services will  
8 include the creation of a new data base for  
9 Trademarks, a new data base of record, and migrate  
10 all of the data off the existing TRAM data base  
11 into that new data base.

12 It's going to be a challenging project  
13 for us. We're underway with it. We've got some  
14 really great, smart people working on it. And  
15 we're in our first phase of the Trademark Records  
16 Management Project, which will accomplish the data  
17 migration effort.

18 We have on the application development  
19 track Cloud computing initiatives. The first one  
20 or the major one is TSDR. Debbie talked a little  
21 bit about that. Some of the changes we made in FY  
22 '12 that provide more information to you and

1 better access specifically with assignments and  
2 the Trademark Trial and Appeal Board.

3 We're going to continue that effort, and  
4 as Debbie mentioned earlier, look at developing -  
5 creating a project which has just kicked off to  
6 develop an electronic Official Gazette, a web  
7 based electronic Official Gazette which will  
8 provide all of search features and capabilities  
9 that I think most of you would be looking for in a  
10 Next Generation Official Gazette.

11 Legacy enhancements, Debbie also talked  
12 about this. We accomplished a project to allow  
13 you access to your mark within the Official  
14 Gazette. Instead of directing you to the very  
15 first page in the Official Gazette, the  
16 notification we sent out to you, the earmark is  
17 being published. It includes a link that will  
18 take you directly to that page in the Official  
19 Gazette where your mark is contained.

20 And then the ID manual, allowing that ID  
21 - from the ID manual in the TEAS form, allow you  
22 to pull down a menu that has all the ID

1 information from the manual so that you can select  
2 the one that is appropriate to your application.

3 Platform improvements, more of the back  
4 end stuff. We were able to separate and  
5 virtualize six different systems, Legacy systems,  
6 take them off of shared physical servers and move  
7 them to our internal Cloud environment, separate  
8 and virtualized. That's FY '11. We completed  
9 that project. We have an FY '12 project which we  
10 started in FY '12 and continues on into FY '13,  
11 which will separate another eight systems, four  
12 within the first quarter and then four more  
13 throughout the rest of the FY '13 year. And  
14 again, that will move those off of shared physical  
15 servers or individual physical servers into our  
16 internal Cloud environment.

17 We talked about the infrastructure  
18 improvements in terms of selecting our case  
19 management product. But we also created a pilot  
20 and a prototype and started a project that will  
21 result in a single sign-on capability for our  
22 internal users.

1           It's a role based system that will allow  
2 us to eliminate the dual sign-in for different  
3 systems or multiple sign-ins for different systems  
4 and provide the folks, based on their role, access  
5 to specific information based on their role.

6           Here's a roadmap as of June in 2012.  
7 There will be an update coming to this roadmap  
8 that will reflect the changes we've made, the  
9 accomplishments we've made. This is where we are  
10 at a very high level. And as Debbie mentioned  
11 earlier, and John mentioned in this presentation,  
12 we are looking to accelerate some activities in  
13 support of the Trademark organization in this next  
14 fiscal year, a new content management system.  
15 That's part of a Next Generation effort to retire  
16 TICR's and replace it with modern technology using  
17 an open source software program. Alfresco is our  
18 selected solution for content management.

19           Development of the electronic Official  
20 Gazette, new application, redoing the Trademark ID  
21 manual, again, in a modern web based platform, and  
22 develop a new filing application using Wizard to

1 enhance your capabilities in submitting  
2 applications.

3           We'll also look at using our new Next  
4 Generation notification solution, a core  
5 capability in providing automatic notifications  
6 for Section 8 and 9 filings. And then we are  
7 going to enhance our ability in our support  
8 organization, so provide extended hours for your  
9 call-in, your help desk, and timely resolution of  
10 service outages.

11           So those are what we're planning on  
12 doing new this year which we weren't planning on  
13 last year. So we'll do everything we planned on  
14 doing in FY '13 and work at these new accelerated  
15 projects.

16           CHAIRMAN TEPPER: Kevin, thank you for  
17 that update. And especially I want to underscore  
18 the last slide. We're very pleased to see you're  
19 getting some additional resource and can focus on  
20 accelerating development and deployment of some of  
21 these. To borrow John's analogy, we understand  
22 the importance of the foundation being right.

1 We're still a new homeowner, very excited and  
2 standing out there in the yard. We want to make  
3 sure you've got every available crew on this so  
4 that, you know, we can have the home ready to go.  
5 And we're all ready to move in I think from the  
6 outside world, so, you know, just do understand  
7 that.

8 I hope you all got everything off of  
9 that roadmap slide. That's my favorite one every  
10 time, guys. Maybe we can brain storm next meeting  
11 about if there's a way, you know, the key  
12 deadlines are sort of key projects, if we can  
13 maybe condense that and highlight the information  
14 for us. But I love the colors every time. I've  
15 never managed to absorb very much from that.  
16 Other questions for our CIO's office?

17 MR. OWENS: Thanks.

18 CHAIRMAN TEPPER: All right. Well,  
19 thank you for the update. Again, it's nice to be  
20 at a point in time after we've had these dialogues  
21 for, you know, a good amount of time. We're  
22 starting to see things coming out. We appreciate

1 that. And it's good to see the enhancements  
2 going. We remain interested in staying tuned to  
3 see what progress we can hear. Any questions from  
4 the Committee, closing questions, or from the  
5 public today? Well, thank you all for being so  
6 agreeable in that case.

7 Before I adjourn the meeting, I have two  
8 announcements I would like to make. I know after  
9 learning that we will have a budget presentation  
10 about cost-based accounting and how we track  
11 expenses, that you're eager to know when you can  
12 come back for that.

13 I would like to tell you our next  
14 meeting date will be Friday, March the 1st, right  
15 here I suspect in this room, and then we will have  
16 a summer meeting on Friday, June the 14th. So you  
17 all will certainly want to block your calendars  
18 now for March the 1st and June the 14th.

19 And just as a last note, understand that  
20 we are, by statute, required to prepare and submit  
21 an annual report to the President. It will be  
22 published in the Official Gazette. That report is

1 well under way. We have drafted it. I would like  
2 to thank all of the members of the Advisory  
3 Committee. They put a lot of effort and a lot of  
4 work into that. I appreciate it, because  
5 otherwise, I'd be in a world of trouble trying to  
6 write that entire report. So I would encourage  
7 you all to watch for that. It will be published  
8 in the Official Gazette shortly. In November that  
9 will be coming out. And with that, I want to  
10 thank you all for your time and participation  
11 today. And we will be adjourned.

12 (Whereupon, at 11:48 a.m., the  
13 PROCEEDINGS were adjourned.)

14 \* \* \* \* \*

15

16

17

18

19

20

21

22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Stephen K. Garland, notary public in  
and for the Commonwealth of Virginia, do hereby  
certify that the forgoing PROCEEDING was duly  
recorded and thereafter reduced to print under my  
direction; that the witnesses were sworn to tell  
the truth under penalty of perjury; that said  
transcript is a true record of the testimony given  
by witnesses; that I am neither counsel for,  
related to, nor employed by any of the parties to  
the action in which this proceeding was called;  
and, furthermore, that I am not a relative or  
employee of any attorney or counsel employed by the  
parties hereto, nor financially or otherwise  
interested in the outcome of this action.

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of  
Virginia

My Commission Expires: July 31, 2015

Notary Public Number 258192

